

HOUSE BILL REPORT

HB 1764

As Reported by House Committee On:
Agriculture & Natural Resources
Appropriations

Title: An act relating to geoduck diver licenses.

Brief Description: Concerning geoduck diver licenses.

Sponsors: Representatives Chandler, Stanford, Blake, Appleton and Dunshee.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/20/13, 2/21/13 [DPS];

Appropriations: 2/28/13, 3/1/13 [DP2S(w/o sub AGNR)].

Brief Summary of Second Substitute Bill

- Establishes an expiration date on geoduck diver licenses and limits the number of nontransferable licenses the Washington Department of Fish and Wildlife (WDFW) can issue after January 1, 2015, to 77.
- Creates the Geoduck Harvest Safety Committee and provides the Department of Natural Resources (DNR) with the authority to establish the Geoduck Diver Safety Program.
- Requires those persons applying for or renewing a license complete the Geoduck Diver Safety Program and be included on a DNR geoduck harvest agreement plan of operation.
- Requires the WDFW to revoke licenses where the license holder has violated a DNR harvest agreement two or more times.
- Provides the DNR with immunity from civil actions regarding the adoption and enforcement of the safety program and safety requirements for divers.

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,

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.

Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Buys, Dunshee, Haigh, Hurst, Kretz, Orcutt, Pettigrew, Schmick, Stanford, Van De Wege and Warnick.

Staff: Cherlyn Walden (786-7296).

Background:

The Washington Department of Fish and Wildlife (WDFW) is responsible for the issuance of Geoduck Diver Licenses and Geoduck Fishery Licenses, a combination of which are required of anyone wishing to participate in a commercial geoduck fishery. In order to be granted a Geoduck Fishery License, the purchaser must first enter into a valid geoduck harvest agreement with the Department of Natural Resources (DNR).

A holder of a Geoduck Fishery License does not necessarily have to obtain a Geoduck Divers License. The Geoduck Fishery License holder can arrange for geoduck divers to harvest the product allowed by the license. Likewise, the holder of a Geoduck Diver License is not required to obtain a Geoduck Fishery License if he or she is operating under the Geoduck Fishery License of another.

Geoduck Diver Licenses are nontransferable. The Geoduck Diver License annual fee is \$185 for residents and \$295 for nonresidents.

Summary of Substitute Bill:

Geoduck Diver License.

Divers engaged in the commercial harvest of geoducks are required to have a Geoduck Diver License. A diver may only own one license, and must perform all geoduck harvesting personally. The annual license fee is \$185 for residents and \$295 for nonresidents. This licensing requirement does not apply to divers engaged in private sector cultured aquatic products cultivation.

The Geoduck Diver License is nontransferable, and beginning January 1, 2014, the Washington Department of Fish and Wildlife (WDFW) may not issue more than 77 geoduck licenses in any year. The WDFW will allow people who held licenses in 2011, 2012, and 2013 and who were listed on a Department of Natural Resources' (DNR) geoduck harvest agreement plan of operation during the same period, the right of first refusal to purchase a Geoduck Diver License in 2014. The qualifying license holders will have to inform the WDFW of their intent to acquire a license within six months of the effective date of the bill.

A Geoduck Diver License expires on December 31 each year. Prior to the license's expiration, the license holder may apply to renew the license if he or she was included on a DNR geoduck harvest agreement plan of operation during the current year. Beginning on January 1, 2014, anyone applying for or renewing a Geoduck Diver License will be required to complete the safety program discussed below.

The WDFW is required to revoke a Geoduck Diver License if the license holder violated a DNR geoduck harvest agreement plan of operation two or more times. The person surrendering the Geoduck Diver License will not be permitted to hold another license for one calendar year from the date the license was revoked.

Geoduck Safety Advisory Committee.

The DNR must establish a Geoduck Harvest Safety Committee (Committee) with one member from the following: the DNR; the DNR's Geoduck Diver Advisory Committee; an organization that represents the interests of geoduck harvesters; and an organization that represents the interests of geoduck divers. The Committee must meet at least quarterly and establish a safety program for geoduck license holders by December 1, 2013. Beginning January 1, 2014, in order to be maintained on a DNR harvest agreement plan of operation, the geoduck diver is required to complete the safety program annually.

Substitute Bill Compared to Original Bill:

The substitute bill provides the following:

- clarifies that the geoduck diver licensing requirements do not apply to divers engaged in private sector cultured aquatic products;
- provides that Geoduck Diver Licenses are nontransferable;
- restricts the number of Geoduck Diver Licenses the Washington Department of Fish and Wildlife (WDFW) can issue after January 1, 2014, to 77;
- changes the annual license fee back to what is provided in statute: \$185 for residents, \$295 for nonresidents;
- requires a Geoduck Diver License holder be included on a Department of Natural Resources' (DNR) geoduck harvest agreement plan of operation for that year in order to renew his or her license for the next year;
- requires a person applying for or renewing a Geoduck Diver License to complete the safety program prior to being issued a license;
- removes reissue fees;
- changes the name of the committee creating the safety program from the Geoduck Safety Advisory Committee to the Geoduck Harvest Safety Committee (Committee);
- adds a member from the DNR Geoduck Diver Advisory Committee to the Committee;
- removes the representative from the WDFW from the Committee;
- provides that the Committee must continue to review and evaluate the safety program's success and effectiveness and make appropriate changes to the program; and
- requires licensed geoduck divers complete the safety program on an annual basis in order to be maintained on a DNR harvest agreement plan of operation.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 21, 2013.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) The fiscal note is not accurate in that it states divers are currently paid about \$2 per pound to harvest, when they are actually paid between 70 and 80 cents per pound. Boat owners are paid about \$2.25 per pound; however, from that they must pay themselves as a diver, the other diver, and a tender who ensures the divers' safety. The boat owner, divers, and tenders are being paid 20-30 percent less than they were four years ago, while the Department of Natural Resources (DNR) is being paid 25-45 percent more than they were four years ago. Any comparison of geoduck divers in Alaska to divers in Washington is not reasonable, because the Alaska divers are guaranteed the opportunity to harvest geoduck and were paid \$9 per pound this season, which is far from the case in Washington.

The proposed substitute addresses many concerns that came with the bill as written now. Private aquaculture will be exempt from the license requirement. The Geoduck Diver Licenses will not be transferable, removing any permit speculation issue. The Department of Fish and Wildlife representative on the safety committee will be removed. The number of licenses will be limited to 77, which is three times the number of jobs that are usually available. Limiting the number of licenses and providing license revocation for repeated poaching will hopefully address the conundrum that divers find themselves in when the decision needs to be made between throwing less than grade "A" geoducks overboard at the request of the boat owner and keeping the job or getting caught by the DNR.

Currently there are no requirements for a Geoduck Diver License. There have been recent diver deaths, and the safety committee and the safety program are designed to prevent unnecessary deaths. The diver union attempted to create a program, but nonunion divers cannot be forced to take part in the program. This bill will prove to be very important to the future viability of the geoduck industry. It is an honest attempt to address broad concerns about workplace safety.

(With concerns) As the bill is written, it appears that it would not allow anyone new to get a Geoduck Diver License. Limiting entry to the diver license is not necessary nor does it enhance the management of the geoduck fishery. It is important that there are enough divers in the pool to take care of the harvest, and limiting entry may affect the number of divers available. The Geoduck Diver License should be nontransferable, and if a license is not being actively used it should be revoked. This will eliminate people holding onto licenses in hopes of selling it later for a profit.

(Opposed) None.

Persons Testifying: (In support) Representative Chandler, prime sponsor; Gordon Baxter, Washington Harvesters Association; and Sam Swanson, Harvest Divers Union.

(With concerns) Megan Duffy, Washington State Department of Natural Resources; and Rich Childers, Washington State Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 31 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Alexander, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Dahlquist, Dunshee, Fagan, Green, Haigh, Haler, Harris, Hudgins, Hunt, Jinkins, Kagi, Maxwell, Morrell, Parker, Pedersen, Pettigrew, Pike, Ross, Schmick, Seaquist, Springer, Sullivan and Taylor.

Staff: Michael Bennion (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Agriculture & Natural Resources:

The Appropriations Committee recommendation:

- delays the implementation dates of provisions in the bill by one year;
- requires the Department of Natural Resources (DNR), rather than the Geoduck Safety Advisory Committee, establish the Geoduck Diver Safety Program and diver safety requirements by rule, and that the DNR adopt rules based on the recommendation of the Geoduck Safety Advisory Committee;
- authorizes the DNR to adopt, amend, or repeal rules related to the diver safety program, so long as they are not in conflict with standards established by the Department of Labor and Industries and only after consideration of the recommendations made from the Geoduck Safety Advisory Committee's review and evaluation of the safety program's success and effectiveness;
- exempts the DNR, its director, or any other government officer from civil liability relating to the adoption or enforcement of the diver safety program and the safety requirements of the diver;
- provides that the State of Washington does not waive its sovereign immunity with respect to certain actions taken by the DNR; and
- removes the emergency clause.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Harvest diving is a dangerous occupation with a small group of people involved. Half of the wild geoduck harvest is taken by tribal divers and the other half by private sector nontribal divers. The bill will help end poaching, protecting both diver jobs and the resource.

The tribal and nontribal divers know each other, help each other, and have worked together over the years. Safety is a major concern. Two divers have been lost in the last year and that should not happen again.

(Opposed) None.

Persons Testifying: Representative Chandler, prime sponsor; and Gordon Baxter, Harvest Divers Union and Washington Harvesters Association.

Persons Signed In To Testify But Not Testifying: None.