

HOUSE BILL REPORT

2SHB 1764

As Amended by the Senate

Title: An act relating to geoduck diver licenses.

Brief Description: Concerning geoduck diver licenses.

Sponsors: House Committee on Appropriations (originally sponsored by 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)].

Floor Activity:

Passed House: 3/6/13, 95-0.
Senate Amended.
Passed Senate: 4/16/13, 45-2.

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

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.

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: Cherlyn Walden (786-7296).

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, Jenkins, Kagi, Maxwell, Morrell, Parker, Pedersen, Pettigrew, Pike, Ross, Schmick, Seaquist, Springer, Sullivan and Taylor.

Staff: Michael Bennion (786-7118).

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 Second 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, 2015, 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, 2013, and 2014 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 2015. 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, 2015, 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 representative appointed by the Commissioner of Public Lands 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 submit a safety program recommendation to the DNR for geoduck license holders by December 1, 2013.

The DNR must adopt by rule a geoduck diver safety program based on the recommendation of the Committee by December 1, 2014. Once the safety program is established, the Committee is responsible for the continued review and evaluation of the safety program's success and effectiveness. The Committee must recommend appropriate changes to the DNR to improve the geoduck diver safety program. The DNR may adopt, amend, or repeal rules as needed to improve the safety program, but must take into consideration the recommendations provided by the Committee. Beginning January 1, 2015, in order to being maintained on a DNR harvest agreement plan of operation, the geoduck diver is required to complete the safety program annually.

Civil Liability

A civil suit or action may not be brought against the DNR for any actions relating to the adoption or enforcement of the geoduck diver safety program or safety requirements adopted by the DNR.

EFFECT OF SENATE AMENDMENT(S):

The effect of the Senate amendments are as follows:

- The Department of Natural Resources may not adopt rules in conflict with the safety standards and regulations implemented by the federal Occupational Safety and Health Administration. This modifies the previous reference to state safety standards to federal safety standards.

- The Department of Fish and Wildlife is authorized to adopt rules necessary to implement the new geoduck diver licensing provisions.
- An erroneous reference was corrected.

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 (Agriculture & Natural Resources):

(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.

Staff Summary of Public Testimony (Appropriations):

(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 (Agriculture & Natural Resources): (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 Testifying (Appropriations): Representative Chandler, prime sponsor; and Gordon Baxter, Harvest Divers Union and Washington Harvesters Association.

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

Persons Signed In To Testify But Not Testifying (Appropriations): None.