

SUBJECT: Removing and disposing vessels and outlawing abandonment of a vessel

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 8 ayes — Mowery, Harper-Brown, Blake, R. Cook, Escobar, Leibowitz, Miller, Orr

0 nays

1 absent — Pickett

WITNESSES: For — Ellis Pickett, Surfrider Foundation Texas Chapter. (*Registered but did not testify*: Jerry Patterson, Texas General Land Office)

Against — None

On — (*Registered but did not testify*: Greg Pollock, Texas General Land Office)

BACKGROUND: Natural Resources Code, ch. 40 is the Oil Spill Prevention and Response Act of 1991. Sec. 40.108 forbids a person from leaving, abandoning, or maintaining any wrecked, derelict, or substantially dismantled structure or vessel involved in an actual or threatened unauthorized discharge of oil on public or private lands. It authorizes the General Land Office (GLO) commissioner to remove any such vessel or structure and to recover the costs of such removal from the owner or operator of the vessel.

Sec. 51.3021 authorizes the commissioner to remove and dispose of a facility or structure on land owned by the state if the structure is without the proper easement or lease from the state or is an imminent and unreasonable threat to public health, safety, or welfare. The commissioner must give written notice to a person who owns or possesses such a structure, and must grant a hearing if the person requests one.

Sec. 40.151 establishes the coastal protection fund to be used for response to and cleanup of pollution from oil spills and for payment of damages from unauthorized discharges. All money from fees, penalties, judgments, reimbursements, and interest provided for in ch. 40 are deposited in the

fund. The GLO commissioner holds any interest in real or personal property purchased through the fund.

Sec. 40.251 authorizes criminal and civil penalties for violations of chapter 40. The maximum criminal penalty available is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

Section 40.254 orders the commissioner to assess administrative penalties in accordance with the act, following an investigation and a report that must be served to the person charged with the violation. If the person charged exercises the right to request a hearing, the commissioner must order one. An examiner, designated by the commissioner, must hear the charges, make findings of fact, and issue a written decision, based on which the commissioner may find that a violation occurred and assess the penalty.

Parks and Wildlife Code, sec. 77.119, establishes the License Buyback Program under which the state may buy back shrimp licenses from willing individuals.

DIGEST:

CSHB 2096 would forbid a person from abandoning a vessel in a wrecked, derelict, or substantially dismantled condition. In addition to a vessel that was leaking oil, or threatened to leak oil, a person could not abandon a damaged vessel in coastal waters or on private or public land if the commissioner found the vessel to be:

- a threat to public health safety, safety, or welfare;
- a threat to the environment; or
- a navigation hazard.

The commissioner could not only remove but also dispose of any vessel in violation of the section and could recover disposal costs from the owner or operator of the vessel. Recovered costs would be deposited in the coastal protection fund. The commissioner would have to comply with the hearing requirements in sec. 40.254 before removing or disposing of a vessel unless the vessel was involved in an actual or threatened oil spill. The commissioner would have to dispose of the vessel in any reasonable and environmentally sound manner, preferably in a manner that generated money or was least expensive. The commissioner would establish a system for prioritizing the removal or disposal of vessels.

Proceeds from the sale of a vessel would be used for removal and disposal costs, and excess funds would be deposited in the coastal protection fund. The commissioner could accept grants, gifts, and donations of property on behalf of the coastal protection fund and could sell any real or personal property accepted on behalf of the fund. Any funds from such a sale would have to be deposited into the coastal protection fund. The commissioner would hold any interest in real or personal property acquired by donation, gift, or grant.

The penalty under sec. 40.251(a) for leaving, abandoning, or maintaining any structure or vessel in a wrecked, derelict, or substantially dismantled condition in coastal waters or on private or public land would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

The bill would extend all of the provisions and requirements under sec. 40.254 to a situation where the commissioner intended to remove or dispose of a derelict vessel. The commissioner would be required to assess administrative penalties and pursue the removal or disposal of derelict vessels, to issue a preliminary report if there was a need to remove or dispose of such a vessel, and to serve notice on the person charged with a violation. Notice would have to be served in person or by registered or certified mail or, if neither option was possible, by posting a copy of the notice on the vessel or structure and publishing the notice in a local newspaper. After the examiner issued the findings of fact, the commissioner could order the removal or disposal of the derelict vessel.

The bill would amend sec. 51.3021 to state that a wrecked, derelict, or substantially dismantled vessel left in place on state land for at least 21 days without the consent of the commissioner would be considered a "structure," which would allow the commissioner to remove or dispose of it in accordance with that section.

Under Parks and Wildlife Code sec. 77.119, the commissioner could order the forfeiture of money paid to a person under the state's shrimp license buyback program if the person unlawfully abandoned a vessel. The money would be credited to the coastal protection fund.

A person who sold a shrimp license back to the state would be required to sign a contract:

- acknowledging that a person who intentionally left, abandoned, or maintained any vessel in a wrecked, derelict, or substantially dismantled condition in violation of sec. 40.108 would be guilty of a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) and subject to civil penalties;
- agreeing not to dispose of a vessel in violation of state law; and
- acknowledging that the unlawful abandonment of a vessel could result in the forfeiture of money paid under the license buyback program.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 2096 would allow the state to clean up abandoned vessels that were on private land even if they did not pose an environmental threat. It would allow the commissioner to protect citizens and shipping by removing derelict vessels on private land that posed a navigation hazard or a threat to public health, safety, or welfare.

The bill also would reduce the number of vessels that are abandoned as it would criminalize abandoning a vessel in a wrecked, derelict, or substantially dismantled condition.

**OPPONENTS
SAY:**

The term “vessel” as defined in the Natural Resources Code includes every type of watercraft, whether self-propelled or otherwise. Thus a person who abandoned a derelict rowboat could receive the same punishment as a person who abandoned a commercial shrimping boat. Punishing these two acts identically would be unfair. The bill should define types and sizes of vessels in order to determine the proper punishment for abandonment.

NOTES:

The bill as introduced created the derelict vessel removal account. The substitute would use the coastal protection fund for the same purposes for which the original would have used the derelict vessel removal account. The original would have required the placement of all funds collected from the disposal or removal of a derelict vessel into the derelict vessel removal account, while the substitute would place all such funds into the coastal protection fund.

The substitute also would authorize the GLO commissioner to accept grants, gifts, and donations of property on behalf of the coastal protection fund.