

BILL ANALYSIS

Senate Research Center
79R11669 RMB-F

C.S.S.B. 1040
By: Janek
S/C on Agriculture & Coastal Resources
4/8/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Current authority for removal of abandoned or sunken vessels is subject to limitations. Section 40.108, Natural Resources Code, applies only to vessels involved in an actual or threatened unauthorized discharge of oil. This provision does not apply to an abandoned vessel that poses no current threat, but would pose a threat at some undetermined time in the future by causing an unauthorized discharge of oil. Expenditures by third parties for removal and disposal costs are also limited to response actions to abate an actual discharge or an imminent threat of pollution.

Section 51.3021, Natural Resources Code, is limited to structures on state-owned land. There is no authority to reimburse third parties for removal costs, unless the commissioner of the General Land Office (commissioner) has contracted with that person or entity for the removal and disposal.

There exists a gap in current law for abandoned and sunken vessels that are not involved in actual or threatened discharge and are not located on land owned by the state.

Furthermore, the Texas Parks and Wildlife Department's program to buy back shrimp licenses for the purpose of managing shrimp fisheries does not address the issue of disposal or transfer of the vessel after selling the license back. An unintended result of the program is that an incentive may be created for shrimpers who have sold their licenses to abandon their vessels to avoid the continued costs of ownership.

C.S.S.B. 1040 enhances the authority of the commissioner to remove and dispose of derelict vessels and structures beyond those involved in actual or threatened discharges of oil and establishes authority for the payment of the cost of removal and disposal. C.S.S.B. 1040 provides a penalty for intentionally abandoning a vessel or structure, and authorizes the commissioner to consider a derelict vessel as a structure for purposes of the authority of the commissioner to remove the structure under Section 51.3021, Natural Resources Code. C.S.S.B. 1040 amends the shrimp buyback program to require a statement in the contract with an applicant which discloses the civil and criminal penalties for abandoning a vessel, and provides that funds paid to buy back a shrimp license are subject to forfeiture if the vessel to which the license applied is abandoned.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of the General Land Office in SECTION 1 (Section 40.108, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 40.108, Natural Resources Code, as follows:

Sec. 40.108. DERELICT VESSELS AND STRUCTURES. (a) Prohibits a person from leaving, abandoning, or maintaining any structure or vessel in certain places, including in or on coastal waters, that is in a wrecked, derelict, or substantially dismantled condition and the commissioner of the General Land Office (commissioner) finds the vessel to be a threat to public health, safety, or welfare, a threat to the environment, or a navigation hazard. Makes nonsubstantive changes.

(b) Authorizes the commissioner to remove and dispose of or contract for the removal and disposal of, rather than remove, any vessel or structure described in Subsection (a). Requires the recovered costs to be deposited to the credit of the coastal protection fund established by Section 40.151. Makes nonsubstantive and conforming changes.

(c) Requires the commissioner to comply with the requirements of Section 40.254 (Orders and Hearings) before removing or disposing of a vessel or structure, and creates an exception.

(d) Sets forth the manner in which the commissioner is required to dispose of the vessel or structure. Requires proceeds from the sale of the vessel or structure to be used for removal and disposal costs, and requires any proceeds in excess of the cost of removal and disposal to be deposited to the credit of the coastal protection fund.

(e) Authorizes the commissioner, by rule, to establish a system for prioritizing the removal or disposal of vessels or structures under this section.

(f) Provides that this section does not impose a duty on the state to remove or dispose of a vessel or structure or to warn of a hazardous condition on state land.

SECTION 2. Amends Section 40.151, Natural Resources Code, by amending Subsections (b) and (d) and adding Subsection (c), as follows:

(b) Requires all fees, penalties, judgments, reimbursements, proceeds from the sale of a vessel or structure removed under Section 40.108, money forfeited under Section 77.119(e), Parks and Wildlife Code, to be credited to the coastal protection fund.

(c) Authorizes the commissioner to accept grants, gifts, and donations of property, including real property, on behalf of the coastal protection fund. Authorizes the commissioner to sell real or personal property accepted on behalf of the fund, and requires the proceeds of the sale to be deposited in the coastal protection fund.

(d) Requires any interest in real or personal property acquired by donation, gift, grant, or by using money in the fund to be held by the commissioner.

SECTION 3. Amends Section 40.251(a), Natural Resources Code, to make it a Class A misdemeanor to leave, abandon, or maintain any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition. Makes a nonsubstantive change.

SECTION 4. Amends Section 40.254, Natural Resources Code, by amending Subsections (a)-(h) and adding Subsections (b-1) and (c-1), as follows:

(a) Requires the commissioner to pursue the removal or disposal of derelict structures or vessels in accordance with this section.

(b) Requires the commissioner to issue a preliminary report if the commissioner concludes that there is a need for removal or disposal of a derelict vessel or structure. Makes nonsubstantive changes.

(b-1) Sets forth the requirements of the preliminary report.

(c) Requires the commissioner to serve notice of the preliminary report to the person charged with the violation which includes a brief summary of the findings, rather than a brief summary of the charges. Makes nonsubstantive changes.

(c-1) Sets forth the required procedures for service or publication of notice.

(d) Makes nonsubstantive changes.

(e) Makes nonsubstantive changes.

(f) Requires the hearing examiner, if the person charged with a violation requests a hearing, to make findings of fact and issue a written decision including the removal or disposal of the derelict vessel or structure or any combination of the available remedies. Makes conforming and nonsubstantive changes.

(g) Makes nonsubstantive changes.

(h) Makes nonsubstantive changes.

SECTION 5. Amends Section 51.3021, Natural Resources Code, by adding Subsection (k) to provide that a wrecked, derelict, or substantially dismantled vessel that is moored or left in place for at least 21 days without the consent of the commissioner is considered a structure for purposes of this section (Removal of Facility or Structure by Commissioner).

SECTION 6. Amends Section 77.119, Parks and Wildlife Code, by adding Subsections (d) and (e), as follows:

(d) Requires a person whose license is selected by the Parks and Wildlife Department to be purchased under the license buyback program to be required to execute a contract, and sets forth the required terms of the contract regarding leaving, abandoning, or maintaining a vessel in a wrecked, derelict, or substantially dismantled condition.

(e) Authorizes the commissioner to order the forfeiture of any money paid to a person under the license buyback program if the commissioner finds that the vessel to which the license applied was abandoned by the person in violation of Section 40.108, Natural Resources Code. Requires any money forfeited under this section to be deposited to the credit of the coastal protection fund established by Section 40.1081, Natural Resources Code.

SECTION 7. Effective date: September 1, 2005.