

By: Bonnen

H.B. No. 2096

Substitute the following for H.B. No. 2096:

By: Miller

C.S.H.B. No. 2096

A BILL TO BE ENTITLED

AN ACT

relating to the removal and disposal of certain vessels and structures in certain locations; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 40.108, Natural Resources Code, is amended to read as follows:

Sec. 40.108. DERELICT VESSELS AND STRUCTURES. (a) A person may not, without the consent of the commissioner, leave, abandon, or maintain any structure or vessel in or on coastal waters, ~~[involved in an actual or threatened unauthorized discharge of oil]~~ on public or private lands or at a public or private port or dock if the structure or vessel is [7] in a wrecked, derelict, or substantially dismantled condition and ~~[without the consent of]~~ the commissioner finds the structure or vessel to be:

(1) involved in an actual or threatened unauthorized discharge of oil;

(2) a threat to public health, safety, or welfare;

(3) a threat to the environment; or

(4) a navigation hazard.

(b) The commissioner may remove and dispose of or contract for the removal and disposal of any vessel or structure described in Subsection (a) ~~[of this section]~~ and may recover the costs of removal and disposal from the owner or operator of the vessel or structure. The recovered costs shall be deposited to the credit of

1 the coastal protection fund established by Section 40.151.

2 (c) The commissioner must comply with the requirements of  
3 Section 40.254 before removing or disposing of a vessel or  
4 structure, except that the commissioner may remove a vessel or  
5 structure involved in an actual or threatened unauthorized  
6 discharge of oil without a hearing.

7 (d) The commissioner may dispose of the vessel or structure  
8 in any reasonable and environmentally sound manner. The  
9 commissioner shall give preference to disposal options that  
10 generate a monetary benefit from the vessel or structure. If no  
11 value may be generated from the vessel or structure, the  
12 commissioner shall select the least costly method. Proceeds from  
13 the sale of the vessel or structure shall be used for removal and  
14 disposal costs, and any proceeds in excess of the cost of removal  
15 and disposal shall be deposited to the credit of the coastal  
16 protection fund.

17 (e) The commissioner by rule may establish a system for  
18 prioritizing the removal or disposal of vessels or structures under  
19 this section.

20 (f) This section does not impose a duty on the state to  
21 remove or dispose of a vessel or structure or to warn of a hazardous  
22 condition on state land.

23 SECTION 2. Section 40.151, Natural Resources Code, is  
24 amended by amending Subsections (b) and (d) and adding Subsection  
25 (c) to read as follows:

26 (b) The coastal protection fund is established in the state  
27 treasury to be used by the commissioner as a nonlapsing revolving

1 fund only for carrying out the purposes of this chapter and of  
2 Subchapter H, Chapter 33. To this fund shall be credited all fees,  
3 penalties, judgments, reimbursements, proceeds from the sale of a  
4 vessel or structure removed under Section 40.108, money forfeited  
5 under Section 77.119(e), Parks and Wildlife Code, interest or  
6 income on the fund, and charges provided for in this chapter and the  
7 fee revenues levied, collected, and credited pursuant to this  
8 chapter. The fund shall not exceed \$50 million.

9 (c) The commissioner may accept grants, gifts, and  
10 donations of property, including real property, on behalf of the  
11 fund. The commissioner may sell real or personal property accepted  
12 on behalf of the fund and shall deposit the proceeds of the sale in  
13 the fund.

14 (d) Any interest in real or personal property acquired by  
15 donation, gift, or grant or by using money in the fund shall be held  
16 by the commissioner.

17 SECTION 3. Section 40.251(a), Natural Resources Code, is  
18 amended to read as follows:

19 (a) A person who intentionally commits any of the following  
20 acts in violation of Subchapter C, D, or E [~~of this chapter~~] shall  
21 be guilty of a Class A misdemeanor:

22 (1) operating a terminal facility or vessel without a  
23 discharge prevention and response plan;

24 (2) operating a terminal facility or vessel without  
25 establishing and maintaining financial responsibility;

26 (3) causing, allowing, or permitting an unauthorized  
27 discharge of oil;

1           (4) making a material false statement with a  
2 fraudulent intent in an application or report; ~~[or]~~

3           (5) with respect to the person in charge of a vessel  
4 from which an unauthorized discharge of oil emanates, taking the  
5 vessel from the jurisdiction of the commissioner prior to proving  
6 financial responsibility; or

7           (6) leaving, abandoning, or maintaining any structure  
8 or vessel in or on coastal waters, on public or private lands, or at  
9 a public or private port or dock if the structure or vessel is in a  
10 wrecked, derelict, or substantially dismantled condition.

11           SECTION 4. Section 40.254, Natural Resources Code, is  
12 amended by amending Subsections (a)-(h) and adding Subsections  
13 (b-1) and (c-1) to read as follows:

14           (a) The commissioner shall assess administrative penalties,  
15 ~~[and]~~ pursue suspension of terminal facility discharge prevention  
16 and response certificates, and pursue the removal or disposal of  
17 derelict structures or vessels in accordance with this section.

18           (b) The commissioner shall issue a preliminary report if  
19 ~~[If]~~ the commissioner, after an investigation, concludes that:

20               (1) a violation has occurred for which:

21                       (A) a penalty should be assessed; or

22                       (B) a discharge prevention and response  
23 certificate should be suspended; or

24               (2) there is a need for removal or disposal of a  
25 derelict vessel or structure.

26           (b-1) The ~~[, the commissioner shall issue a]~~ preliminary  
27 report must:

(1) state [~~stating~~] the facts that support the commissioner's conclusion;

(2) recommend:

(A) [~~recommending~~] that a penalty be imposed;

(B) that [~~or~~] a certificate be suspended[, ~~or both~~];

(C) that a derelict vessel or structure be removed or disposed of; or

(D) any combination of remedies under Paragraphs (A)-(C); and

(3) if a penalty under Subdivision (2)(A) is recommended, recommend [~~recommending~~] the amount of the penalty.

(c) The commissioner shall serve written notice of the preliminary report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the findings [~~charges~~];

(2) a statement of the commissioner's recommendations;

(3) a statement of the right of the person charged with the violation to a hearing; and

(4) a copy of the preliminary report.

(c-1) The notice required by Subsection (c) must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person is unknown, by posting a copy of the notice on the facility, vessel, or structure and by publishing notice in a

1 newspaper with general circulation in the county in which the  
2 facility, vessel, or structure is located at least two times within  
3 10 consecutive days.

4 (d) Not later than the 20th day after the date on which the  
5 notice is served, the person charged with the violation may consent  
6 in writing to the report, including the commissioner's  
7 recommendations, or make a written request for a hearing.

8 (e)(1) If the person charged with the violation consents to  
9 the commissioner's recommendations or does not timely respond to  
10 the notice, the commissioner by order shall take the recommended  
11 action or order a hearing to be held on the findings and  
12 recommendations in the report.

13 (2) If the commissioner takes the recommended action,  
14 the commissioner shall serve written notice of the decision to the  
15 person. The person [~~charged~~] must comply with the order and pay any  
16 penalty assessed.

17 (f)(1) If the person charged with the violation requests a  
18 hearing, the commissioner shall order a hearing and shall give  
19 written notice of that hearing.

20 (2) The hearing shall be held by a hearing examiner  
21 designated by the commissioner.

22 (3) The hearing examiner shall make findings of fact  
23 and promptly issue to the commissioner a written decision as to the  
24 occurrence of the violation and a recommendation on suspension of  
25 the discharge prevention and response certificate, the amount of  
26 any proposed penalty, the removal or disposal of the derelict  
27 vessel or structure, or any combination of those remedies [~~or~~

1 ~~both~~].

2 (4) Based on the findings of fact and the  
3 recommendations of the hearing examiner, the commissioner by order  
4 may:

5 (A) find that a violation has occurred and assess  
6 a penalty;

7 (B) ~~or~~ suspend a discharge prevention and  
8 response certificate;

9 (C) order the removal or disposal of a derelict  
10 vessel or structure;

11 (D) order any combination of those remedies; [~~or~~  
12 ~~or both~~] or

13 (E) ~~may~~ find that no violation occurred.

14 (5) The commissioner shall serve notice to the person  
15 ~~charged~~ of the commissioner's decision. If the commissioner  
16 finds that a violation has occurred and assesses a penalty, ~~or~~  
17 suspends a discharge prevention and response certificate, or orders  
18 the removal or disposal of a derelict vessel or structure, the  
19 commissioner shall give to the person ~~charged~~ written notice of:

20 (A) the commissioner's findings;

21 (B) the amount of the penalty or the terms of the  
22 suspension or removal or disposal; and

23 (C) the person's right to judicial review of the  
24 commissioner's order.

25 (g)(1) Not later than the 30th day after the date on which  
26 the commissioner's order is final, the person charged with the  
27 violation shall comply with the order or file a petition for

1 judicial review.

2           (2) [~~(3)~~] On failure of the person to comply with the  
3 order or file a petition for judicial review, the commissioner may  
4 refer the matter to the attorney general for collection and  
5 enforcement.

6           (3) [~~(4)~~] Judicial review of the order or decision of  
7 the commissioner shall be under Subchapter G, Chapter 2001,  
8 Government Code.

9           (h)(1) If a penalty is reduced or not assessed, the  
10 commissioner shall remit to the person charged with the violation  
11 the appropriate amount of any penalty payment plus accrued  
12 interest.

13           (2) Accrued interest on amounts remitted by the  
14 commissioner shall be paid for the period beginning on the date the  
15 penalty is paid to the commissioner and ending on the date the  
16 penalty is remitted at a rate equal to the rate charged on loans to  
17 depository institutions by the New York Federal Reserve Bank.

18           SECTION 5. Section 51.3021, Natural Resources Code, is  
19 amended by adding Subsection (k) to read as follows:

20           (k) A wrecked, derelict, or substantially dismantled vessel  
21 that is moored or left in place for at least 21 days without the  
22 consent of the commissioner is considered a structure for purposes  
23 of this section.

24           SECTION 6. Section 77.119, Parks and Wildlife Code, is  
25 amended by adding Subsections (d) and (e) to read as follows:

26           (d) A person whose license is selected by the department to  
27 be purchased under the license buyback program shall be required to

1 execute a contract that includes the following terms:

2 "Section 40.251, Natural Resources Code, provides that  
3 any person who intentionally leaves, abandons, or  
4 maintains any vessel in a wrecked, derelict, or  
5 substantially dismantled condition in violation of  
6 Section 40.108, Natural Resources Code, shall be  
7 guilty of a Class A misdemeanor. Further, a person who  
8 leaves, abandons, or maintains a derelict vessel in  
9 violation of Section 40.108, Natural Resources Code,  
10 shall be subject to a civil penalty of not less than  
11 \$100 or more than \$10,000 per violation for each day of  
12 violation, not to exceed a maximum of \$125,000  
13 pursuant to Section 40.251(f), Natural Resources Code.  
14 I agree not to abandon or dispose of any vessel in  
15 violation of state law. I further acknowledge that  
16 money paid to me under the license buyback program may  
17 be forfeited to the coastal protection fund  
18 established by Section 40.151, Natural Resources Code,  
19 if the commissioner of the General Land Office finds  
20 that the vessel to which the license applied was  
21 abandoned in violation of Section 40.108, Natural  
22 Resources Code."

23 (e) The commissioner of the General Land Office may order  
24 the forfeiture of any money paid to a person under the license  
25 buyback program if the commissioner finds that the vessel to which  
26 the license applied was abandoned by the person in violation of  
27 Section 40.108, Natural Resources Code. Any money forfeited under

1 this section shall be deposited to the credit of the coastal  
2 protection fund established by Section 40.151, Natural Resources  
3 Code.

4 SECTION 7. This Act takes effect September 1, 2005.