

By: Bonnen

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 a penalty.

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 ~~[7, 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 derelict vessel removal account established by Section 40.1081.

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 derelict vessel
16 removal account.

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. Subchapter C, Chapter 40, Natural Resources
24 Code, is amended by adding Section 40.1081 to read as follows:

25 Sec. 40.1081. DERELICT VESSEL REMOVAL ACCOUNT. (a) The
26 purpose of this section is to provide immediately available funds
27 for payment of the costs of removal or disposal of a vessel or

1 structure under Section 40.108.

2 (b) The derelict vessel removal account is established in
3 the state treasury to be used by the commissioner as a nonlapsing
4 revolving fund account only for carrying out the purposes of
5 Section 40.108. All reimbursements for the costs of removing or
6 disposing of a vessel or structure, proceeds from the sale of a
7 vessel or structure removed under Section 40.108, interest or
8 income on the account, and funds forfeited under Section 77.119(e),
9 Parks and Wildlife Code, shall be credited to the account.

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

15 (d) Money in the account may be disbursed only for the
16 following purposes related to the implementation and enforcement of
17 Section 40.108:

18 (1) administrative, personnel, and training expenses;
19 (2) the cost of purchasing equipment;
20 (3) equipment maintenance and operating costs; and
21 (4) costs related to removal or disposal of a derelict
22 vessel or structure.

23 SECTION 3. Section 40.151(b), Natural Resources Code, is
24 amended to read as follows:

25 (b) The coastal protection fund is established in the state
26 treasury to be used by the commissioner as a nonlapsing revolving
27 fund only for carrying out the purposes of this chapter and of

1 Subchapter H, Chapter 33. To this fund shall be credited all fees,
2 penalties, judgments, reimbursements, other than reimbursements
3 for the costs of removing or disposing of a derelict vessel or
4 structure, interest or income on the fund, and charges provided for
5 in this chapter and the fee revenues levied, collected, and
6 credited pursuant to this chapter. The fund shall not exceed \$50
7 million.

8 SECTION 4. Section 40.153, Natural Resources Code, is
9 amended to correct a reference and is further amended to read as
10 follows:

11 Sec. 40.153. REIMBURSEMENT OF FUND. The commissioner
12 shall recover to the use of the fund, either from persons
13 responsible for the unauthorized discharge or otherwise liable or
14 from the federal fund, jointly and severally, all sums owed to or
15 expended from the fund. This section does not apply to sums
16 expended under Section 40.108 or 40.152(a)(9) [~~40.152(a)(10)~~].

17 SECTION 5. 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 be
21 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 6. 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 (1) state [~~stating~~] the facts that support the
2 commissioner's conclusion;

3 (2) recommend:

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

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

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

9 (D) any combination of remedies under paragraphs
10 (A)-(C); and

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

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

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

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

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

21 (4) a copy of the preliminary report.

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

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

25 (2) if personal service cannot be obtained or the
26 address of the person is unknown, by posting a copy of the notice on
27 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; [~~r~~
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 (3) On failure of the person to comply with the order
3 or file a petition for judicial review, the commissioner may refer
4 the matter to the attorney general for collection and enforcement.

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

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

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

17 SECTION 7. Section 51.3021, Natural Resources Code, is
18 amended by adding Subsection (k) to read as follows:

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

23 SECTION 8. Section 77.119, Parks and Wildlife Code, is
24 amended by adding Subsections (d) and (e) to read as follows:

25 (d) A person whose license is selected by the department to
26 be purchased under the license buyback program shall be required to
27 execute a contract that includes the following terms:

"Section 40.251, Natural Resources Code, provides that any person who intentionally leaves, abandons, or maintains any vessel in a wrecked, derelict, or substantially dismantled condition in violation of Section 40.108, Natural Resources Code, shall be guilty of a Class A misdemeanor. Further, a person who leaves, abandons, or maintains a derelict vessel in violation of Section 40.108, Natural Resources Code, shall be subject to a civil penalty of not less than \$100 or more than \$10,000 per violation for each day of violation, not to exceed a maximum of \$125,000 pursuant to Section 40.251(f), Natural Resources Code. I agree not to abandon or dispose of any vessel in violation of state law. I further acknowledge that funds paid to me under the license buyback program may be forfeited to the derelict vessel removal account established by Section 40.1081, Natural Resources Code, if the commissioner of the General Land Office finds that the vessel to which the license applied was abandoned in violation of Section 40.108, Natural Resources Code."

(e) The commissioner may order the forfeiture of any funds 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. Any funds forfeited under this section shall be deposited to the credit of the derelict vessel removal account

H.B. No. 2096

1 established by Section 40.1081, Natural Resources Code.

2 SECTION 9. This Act takes effect September 1, 2005.