

By: Bonnen (Senate Sponsor - Janek) H.B. No. 2096
(In the Senate - Received from the House April 25, 2005;
April 26, 2005, read first time and referred to Committee on
Natural Resources; May 4, 2005, reported favorably by the
following vote: Yeas 9, Nays 0; May 4, 2005, sent to printer.)

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 [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
the coastal protection fund established by Section 40.151.

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

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

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

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

(b) The coastal protection fund is established in the state
treasury to be used by the commissioner as a nonlapsing revolving
fund only for carrying out the purposes of this chapter and of
Subchapter H, Chapter 33. To this fund shall be credited 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, interest or
income on the fund, and charges provided for in this chapter and the
fee revenues levied, collected, and credited pursuant to this

chapter. The fund shall not exceed \$50 million.

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

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

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

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

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

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

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

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

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

(6) leaving, abandoning, or maintaining 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.

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

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

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

(1) a violation has occurred for which:

(A) a penalty should be assessed; or

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

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

~~(b-1) The [, the commissioner shall issue a] preliminary 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 newspaper with general circulation in the county in which the facility, vessel, or structure is located at least two times within 10 consecutive days.

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

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

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

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

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

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

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

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

(B) ~~[or]~~ suspend a discharge prevention and response certificate;

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

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

(E) ~~[may]~~ find that no violation occurred.

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

(A) the commissioner's findings;

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

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

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

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

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

(h)(1) If a penalty is reduced or not assessed, the commissioner shall remit to the person charged with the violation

the appropriate amount of any penalty payment plus accrued interest.

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

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

(k) 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.

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

(d) A person whose license is selected by the department to be purchased under the license buyback program shall be required to 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 money paid to me under the license buyback program may be forfeited to the coastal protection fund established by Section 40.151, 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 of the General Land Office may 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. Any money forfeited under this section shall be deposited to the credit of the coastal protection fund established by Section 40.151, Natural Resources Code.

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

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