

1-1 By: Janek S.B. No. 1040  
1-2 (In the Senate - Filed March 7, 2005; March 21, 2005, read  
1-3 first time and referred to Subcommittee on Agriculture and Coastal  
1-4 Resources; April 7, 2005, reported adversely, with favorable  
1-5 Committee Substitute to Committee on Natural Resources;  
1-6 April 18, 2005, reported adversely, with favorable Committee  
1-7 Substitute from Committee on Natural Resources by the following  
1-8 vote: Yeas 9, Nays 0; April 18, 2005, sent to printer.)

1-9 COMMITTEE SUBSTITUTE FOR S.B. No. 1040 By: Madla

1-10 A BILL TO BE ENTITLED  
1-11 AN ACT

1-12 relating to the removal and disposal of certain vessels and  
1-13 structures in certain locations; providing penalties.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 40.108, Natural Resources Code, is  
1-16 amended to read as follows:

1-17 Sec. 40.108. DERELICT VESSELS AND STRUCTURES. (a) A  
1-18 person may not, without the consent of the commissioner, leave,  
1-19 abandon, or maintain any structure or vessel in or on coastal  
1-20 waters, ~~[involved in an actual or threatened unauthorized discharge~~  
1-21 ~~of oil]~~ on public or private lands or at a public or private port or  
1-22 dock ~~if the structure or vessel is~~<sup>[7]</sup> in a wrecked, derelict, or  
1-23 substantially dismantled condition ~~and~~<sup>[7]</sup> ~~without the consent of~~  
1-24 the commissioner ~~finds the structure or vessel to be:~~

1-25 (1) involved in an actual or threatened unauthorized  
1-26 discharge of oil;

1-27 (2) a threat to public health, safety, or welfare;

1-28 (3) a threat to the environment; or

1-29 (4) a navigation hazard.

1-30 (b) The commissioner may remove and dispose of or contract  
1-31 for the removal and disposal of any vessel or structure described in  
1-32 Subsection (a) ~~[of this section]~~ and may recover the costs of  
1-33 removal and disposal from the owner or operator of the vessel or  
1-34 structure. The recovered costs shall be deposited to the credit of  
1-35 the coastal protection fund established by Section 40.151.

1-36 (c) The commissioner must comply with the requirements of  
1-37 Section 40.254 before removing or disposing of a vessel or  
1-38 structure, except that the commissioner may remove a vessel or  
1-39 structure involved in an actual or threatened unauthorized  
1-40 discharge of oil without a hearing.

1-41 (d) The commissioner may dispose of the vessel or structure  
1-42 in any reasonable and environmentally sound manner. The  
1-43 commissioner shall give preference to disposal options that  
1-44 generate a monetary benefit from the vessel or structure. If no  
1-45 value may be generated from the vessel or structure, the  
1-46 commissioner shall select the least costly method. Proceeds from  
1-47 the sale of the vessel or structure shall be used for removal and  
1-48 disposal costs, and any proceeds in excess of the cost of removal  
1-49 and disposal shall be deposited to the credit of the coastal  
1-50 protection fund.

1-51 (e) The commissioner by rule may establish a system for  
1-52 prioritizing the removal or disposal of vessels or structures under  
1-53 this section.

1-54 (f) This section does not impose a duty on the state to  
1-55 remove or dispose of a vessel or structure or to warn of a hazardous  
1-56 condition on state land.

1-57 SECTION 2. Section 40.151, Natural Resources Code, is  
1-58 amended by amending Subsections (b) and (d) and adding Subsection  
1-59 (c) to read as follows:

1-60 (b) The coastal protection fund is established in the state  
1-61 treasury to be used by the commissioner as a nonlapsing revolving  
1-62 fund only for carrying out the purposes of this chapter and of  
1-63 Subchapter H, Chapter 33. To this fund shall be credited all fees,

2-1 penalties, judgments, reimbursements, proceeds from the sale of a  
 2-2 vessel or structure removed under Section 40.108, money forfeited  
 2-3 under Section 77.119(e), Parks and Wildlife Code, interest or  
 2-4 income on the fund, and charges provided for in this chapter and the  
 2-5 fee revenues levied, collected, and credited pursuant to this  
 2-6 chapter. The fund shall not exceed \$50 million.

2-7 (c) The commissioner may accept grants, gifts, and  
 2-8 donations of property, including real property, on behalf of the  
 2-9 fund. The commissioner may sell real or personal property accepted  
 2-10 on behalf of the fund and shall deposit the proceeds of the sale in  
 2-11 the fund.

2-12 (d) Any interest in real or personal property acquired by  
 2-13 donation, gift, or grant or by using money in the fund shall be held  
 2-14 by the commissioner.

2-15 SECTION 3. Subsection (a), Section 40.251, Natural  
 2-16 Resources Code, is amended to read as follows:

2-17 (a) A person who intentionally commits any of the following  
 2-18 acts in violation of Subchapter C, D, or E [~~of this chapter~~] shall  
 2-19 be guilty of a Class A misdemeanor:

2-20 (1) operating a terminal facility or vessel without a  
 2-21 discharge prevention and response plan;

2-22 (2) operating a terminal facility or vessel without  
 2-23 establishing and maintaining financial responsibility;

2-24 (3) causing, allowing, or permitting an unauthorized  
 2-25 discharge of oil;

2-26 (4) making a material false statement with a  
 2-27 fraudulent intent in an application or report; [~~or~~]

2-28 (5) with respect to the person in charge of a vessel  
 2-29 from which an unauthorized discharge of oil emanates, taking the  
 2-30 vessel from the jurisdiction of the commissioner prior to proving  
 2-31 financial responsibility; or

2-32 (6) leaving, abandoning, or maintaining any structure  
 2-33 or vessel in or on coastal waters, on public or private lands, or at  
 2-34 a public or private port or dock if the structure or vessel is in a  
 2-35 wrecked, derelict, or substantially dismantled condition.

2-36 SECTION 4. Section 40.254, Natural Resources Code, is  
 2-37 amended by amending Subsections (a) through (h) and adding  
 2-38 Subsections (b-1) and (c-1) to read as follows:

2-39 (a) The commissioner shall assess administrative penalties,  
 2-40 [and] pursue suspension of terminal facility discharge prevention  
 2-41 and response certificates, and pursue the removal or disposal of  
 2-42 derelict structures or vessels in accordance with this section.

2-43 (b) The commissioner shall issue a preliminary report if  
 2-44 [if] the commissioner, after an investigation, concludes that:

2-45 (1) a violation has occurred for which:  
 2-46 (A) a penalty should be assessed; or  
 2-47 (B) a discharge prevention and response  
 2-48 certificate should be suspended; or

2-49 (2) there is a need for removal or disposal of a  
 2-50 derelict vessel or structure.

2-51 (b-1) The [~~the commissioner shall issue a~~] preliminary  
 2-52 report must:

2-53 (1) state [stating] the facts that support the  
 2-54 commissioner's conclusion;

2-55 (2) recommend:  
 2-56 (A) [recommending] that a penalty be imposed;  
 2-57 (B) that [~~or~~] a certificate be suspended [~~or~~  
 2-58 both];

2-59 (C) that a derelict vessel or structure be  
 2-60 removed or disposed of; or

2-61 (D) any combination of remedies under Paragraphs  
 2-62 (A)-(C); and

2-63 (3) if a penalty under Subdivision (2)(A) is  
 2-64 recommended, recommend [recommending] the amount of the penalty.

2-65 (c) The commissioner shall serve written notice of the  
 2-66 preliminary report to the person charged with the violation not  
 2-67 later than the 10th day after the date on which the report is  
 2-68 issued. The notice must include:

2-69 (1) a brief summary of the findings [~~charges~~];

3-1 (2) a statement of the commissioner's recommendations;  
3-2 (3) a statement of the right of the person charged with  
3-3 the violation to a hearing; and  
3-4 (4) a copy of the preliminary report.

3-5 (c-1) The notice required by Subsection (c) must be given:  
3-6 (1) by service in person or by registered or certified  
3-7 mail, return receipt requested; or

3-8 (2) if personal service cannot be obtained or the  
3-9 address of the person is unknown, by posting a copy of the notice on  
3-10 the facility, vessel, or structure and by publishing notice in a  
3-11 newspaper with general circulation in the county in which the  
3-12 facility, vessel, or structure is located at least two times within  
3-13 10 consecutive days.

3-14 (d) Not later than the 20th day after the date on which the  
3-15 notice is served, the person charged with the violation may consent  
3-16 in writing to the report, including the commissioner's  
3-17 recommendations, or make a written request for a hearing.

3-18 (e)(1) If the person charged with the violation consents to  
3-19 the commissioner's recommendations or does not timely respond to  
3-20 the notice, the commissioner by order shall take the recommended  
3-21 action or order a hearing to be held on the findings and  
3-22 recommendations in the report.

3-23 (2) If the commissioner takes the recommended action,  
3-24 the commissioner shall serve written notice of the decision to the  
3-25 person. The person [~~charged~~] must comply with the order and pay any  
3-26 penalty assessed.

3-27 (f)(1) If the person charged with the violation requests a  
3-28 hearing, the commissioner shall order a hearing and shall give  
3-29 written notice of that hearing.

3-30 (2) The hearing shall be held by a hearing examiner  
3-31 designated by the commissioner.

3-32 (3) The hearing examiner shall make findings of fact  
3-33 and promptly issue to the commissioner a written decision as to the  
3-34 occurrence of the violation and a recommendation on suspension of  
3-35 the discharge prevention and response certificate, the amount of  
3-36 any proposed penalty, the removal or disposal of the derelict  
3-37 vessel or structure, or any combination of those remedies [~~or~~  
3-38 both].

3-39 (4) Based on the findings of fact and the  
3-40 recommendations of the hearing examiner, the commissioner by order  
3-41 may:

3-42 (A) find that a violation has occurred and assess  
3-43 a penalty;

3-44 (B) [~~or~~] suspend a discharge prevention and  
3-45 response certificate;

3-46 (C) order the removal or disposal of a derelict  
3-47 vessel or structure;

3-48 (D) order any combination of those remedies; [~~or~~  
3-49 both,] or

3-50 (E) [~~may~~] find that no violation occurred.

3-51 (5) The commissioner shall serve notice to the person  
3-52 [~~charged~~] of the commissioner's decision. If the commissioner  
3-53 finds that a violation has occurred and assesses a penalty, [~~or~~]  
3-54 suspends a discharge prevention and response certificate, or orders  
3-55 the removal or disposal of a derelict vessel or structure, the  
3-56 commissioner shall give to the person [~~charged~~] written notice of:

3-57 (A) the commissioner's findings;

3-58 (B) the amount of the penalty or the terms of the  
3-59 suspension or removal or disposal; and

3-60 (C) the person's right to judicial review of the  
3-61 commissioner's order.

3-62 (g)(1) Not later than the 30th day after the date on which  
3-63 the commissioner's order is final, the person charged with the  
3-64 violation shall comply with the order or file a petition for  
3-65 judicial review.

3-66 (2) [~~(3)~~] On failure of the person to comply with the  
3-67 order or file a petition for judicial review, the commissioner may  
3-68 refer the matter to the attorney general for collection and  
3-69 enforcement.

4-1 (3) [~~4~~] Judicial review of the order or decision of  
4-2 the commissioner shall be under Subchapter G, Chapter 2001,  
4-3 Government Code.

4-4 (h)(1) If a penalty is reduced or not assessed, the  
4-5 commissioner shall remit to the person charged with the violation  
4-6 the appropriate amount of any penalty payment plus accrued  
4-7 interest.

4-8 (2) Accrued interest on amounts remitted by the  
4-9 commissioner shall be paid for the period beginning on the date the  
4-10 penalty is paid to the commissioner and ending on the date the  
4-11 penalty is remitted at a rate equal to the rate charged on loans to  
4-12 depository institutions by the New York Federal Reserve Bank.

4-13 SECTION 5. Section 51.3021, Natural Resources Code, is  
4-14 amended by adding Subsection (k) to read as follows:

4-15 (k) A wrecked, derelict, or substantially dismantled vessel  
4-16 that is moored or left in place for at least 21 days without the  
4-17 consent of the commissioner is considered a structure for purposes  
4-18 of this section.

4-19 SECTION 6. Section 77.119, Parks and Wildlife Code, is  
4-20 amended by adding Subsections (d) and (e) to read as follows:

4-21 (d) A person whose license is selected by the department to  
4-22 be purchased under the license buyback program shall be required to  
4-23 execute a contract that includes the following terms:

4-24 "Section 40.251, Natural Resources Code, provides that  
4-25 any person who intentionally leaves, abandons, or  
4-26 maintains any vessel in a wrecked, derelict, or  
4-27 substantially dismantled condition in violation of  
4-28 Section 40.108, Natural Resources Code, shall be  
4-29 guilty of a Class A misdemeanor. Further, a person who  
4-30 leaves, abandons, or maintains a derelict vessel in  
4-31 violation of Section 40.108, Natural Resources Code,  
4-32 shall be subject to a civil penalty of not less than  
4-33 \$100 or more than \$10,000 per violation for each day of  
4-34 violation, not to exceed a maximum of \$125,000  
4-35 pursuant to Section 40.251(f), Natural Resources Code.  
4-36 I agree not to abandon or dispose of any vessel in  
4-37 violation of state law. I further acknowledge that  
4-38 money paid to me under the license buyback program may  
4-39 be forfeited to the coastal protection fund  
4-40 established by Section 40.151, Natural Resources Code,  
4-41 if the commissioner of the General Land Office finds  
4-42 that the vessel to which the license applied was  
4-43 abandoned in violation of Section 40.108, Natural  
4-44 Resources Code."

4-45 (e) The commissioner of the General Land Office may order  
4-46 the forfeiture of any money paid to a person under the license  
4-47 buyback program if the commissioner finds that the vessel to which  
4-48 the license applied was abandoned by the person in violation of  
4-49 Section 40.108, Natural Resources Code. Any money forfeited under  
4-50 this section shall be deposited to the credit of the coastal  
4-51 protection fund established by Section 40.151, Natural Resources  
4-52 Code.

4-53 SECTION 7. This Act takes effect September 1, 2005.

4-54 \* \* \* \* \*