

By: Bonnen

H.B. No. 3306

A BILL TO BE ENTITLED

AN ACT

relating to the removal and disposal of certain vessels and structures in or on coastal waters.

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

SECTION 1. Section 40.003, Natural Resources Code, is amended by adding Subdivisions (16-a) and (16-b) to read as follows:

(16-a) "No intrinsic value" means that the cost of removal and disposal of a vessel or structure that has been abandoned or left in or on coastal waters exceeds the salvage value of the vessel or structure.

(16-b) "Numbered vessel" means a vessel:

(A) for which a certificate of number has been awarded by this state as required by Chapter 31, Parks and Wildlife Code; or

(B) covered by a number in full force and effect awarded under federal law or a federally approved numbering system of another state.

SECTION 2. Section 40.108, Natural Resources Code, is amended by amending Subsections (b) and (d) and adding Subsections (d-1), (d-2), and (d-3) to read as follows:

(b) The commissioner may remove and dispose of or contract for the removal and disposal of any vessel or structure described in Subsection (a) and may recover the costs of removal, storage, and

1 disposal from the owner or operator of the vessel or
2 structure. Except as provided by Subsection (d-1), the [The]
3 recovered costs shall be deposited to the credit of the coastal
4 protection fund established by Section 40.151.

5 (d) The commissioner may dispose of the vessel or structure
6 in any reasonable and environmentally sound manner. The
7 commissioner shall give preference to disposal options that
8 generate a monetary benefit from the vessel or structure. If no
9 value may be generated from the vessel or structure, the
10 commissioner shall select the least costly method. Except as
11 provided by Subsection (d-1), proceeds [~~Proceeds~~]
12 the vessel or structure shall be used for removal, storage, and
13 disposal costs, and any proceeds in excess of the cost of removal,
14 storage, and disposal shall be deposited to the credit of the
15 coastal protection fund.

16 (d-1) If the commissioner has actual notice that a person
17 holds a security interest in a vessel or structure subject to
18 removal or disposal under this section, notice must be given to the
19 person in the manner provided by Section 40.254. If the vessel or
20 structure is not removed within a reasonable time as specified in
21 the preliminary report under Section 40.254, the commissioner may
22 remove and dispose of, or contract for the removal and disposal of,
23 any vessel or structure described by Subsection (a). The interest
24 of the state in recovering removal, storage, and disposal costs
25 shall have priority over the interest of the holder of a security
26 interest in a vessel or structure described by Subsection (a).
27 Proceeds from the sale of the vessel or structure in excess of the

1 cost of removal, storage, and disposal shall be paid to the holder
2 of the security interest in the vessel or structure in an amount not
3 to exceed the amount necessary to satisfy the secured debt.

4 (d-2) For purposes of this section, the term "structure"
5 includes a vehicle as defined by Section 502.001, Transportation
6 Code, if the vehicle is:

7 (1) located in coastal waters; and

8 (2) in a wrecked, derelict, or substantially
9 dismantled condition.

10 (d-3) The commissioner shall make information on abandoned
11 vessels and structures accessible on the General Land Office's
12 Internet website and in any other medium, as determined by the
13 commissioner, to the public and to a person receiving notice as
14 required by Section 40.254.

15 SECTION 3. Section 40.254, Natural Resources Code, is
16 amended by amending Subsections (b-1), (c-1), (d), (e), (f), and
17 (g) and adding Subsection (c-2) to read as follows:

18 (b-1) The preliminary report must:

19 (1) state the facts that support the commissioner's
20 conclusion;

21 (2) in the case of a derelict vessel or structure,
22 determine whether the vessel or structure is considered:

23 (A) a numbered vessel; or

24 (B) a vessel or structure that has no intrinsic
25 value;

26 (3) recommend:

27 (A) that a penalty be imposed;

- 1 (B) that a certificate be suspended;
- 2 (C) that a derelict vessel or structure be
3 removed or disposed of; or
- 4 (D) any combination of remedies under Paragraphs
5 (A)-(C); and

6 (4) [~~(3)~~] if a penalty under Subdivision (3)(A)
7 [~~(2)(A)~~] is recommended, recommend the amount of the penalty.

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

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

11 (2) if personal service cannot be obtained or the
12 address of the person is unknown, by posting a copy of the notice on
13 the facility, vessel, or structure and by publishing notice on the
14 Internet website of the General Land Office and in the Texas
15 Register [~~a newspaper with general circulation in the county in~~
16 ~~which the facility, vessel, or structure is located~~] at least two
17 times within 10 consecutive days.

18 (c-2) The notice required by Subsection (c) must be given by
19 posting a copy of the notice on a derelict vessel or structure if
20 the derelict vessel or structure has been determined to have no
21 intrinsic value under Subsection (b-1).

22 (d) Not later than the 20th day after the date on which the
23 notice is served, the person charged with the violation or a person
24 claiming ownership of a vessel or structure for which notice is
25 posted under Subsection (c-2) may consent in writing to the report,
26 including the commissioner's recommendations, or make a written
27 request for a hearing.

1 (e)(1) If the person charged with the violation or a person
2 claiming ownership of a vessel for which notice is posted under
3 Subsection (c-2) consents to the commissioner's recommendations or
4 does not timely respond to the notice, the commissioner by order
5 shall take the recommended action or order a hearing to be held on
6 the findings and recommendations in the report.

7 (2) If the commissioner takes the recommended action,
8 the commissioner shall serve written notice of the decision to the
9 person in the same manner as provided for notice of the preliminary
10 report. The person must comply with the order, including a removal
11 order, and pay any penalty assessed.

12 (f)(1) If the person charged with the violation or a person
13 claiming ownership of a vessel for which notice is posted under
14 Subsection (c-2) requests a hearing, the commissioner shall order a
15 hearing and shall give written notice of that hearing.

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

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

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

27 (A) find that a violation has occurred and assess

1 a penalty;

2 (B) suspend a discharge prevention and response
3 certificate;

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

6 (D) order any combination of those remedies; or

7 (E) find that no violation occurred.

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

14 (A) the commissioner's findings;

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

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

19 (g)(1) Not later than the 30th day after the date on which
20 the commissioner's order is final, the person charged with the
21 violation or a person claiming ownership of a vessel for which
22 notice is posted under Subsection (c-2) shall comply with the order
23 or file a petition for judicial review.

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

27 (3) Judicial review of the order or decision of the

H.B. No. 3306

1 commissioner shall be under Subchapter G, Chapter 2001, Government
2 Code.

3 SECTION 4. This Act takes effect September 1, 2009.