

1-1 By: Bonnen (Senate Sponsor - Jackson) H.B. No. 3306
1-2 (In the Senate - Received from the House May 1, 2009;
1-3 May 6, 2009, read first time and referred to Committee on Natural
1-4 Resources; May 12, 2009, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 12, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the removal and disposal of certain vessels and
1-9 structures in or on coastal waters.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 40.003, Natural Resources Code, is
1-12 amended by adding Subdivisions (16-a) and (16-b) to read as
1-13 follows:

1-14 (16-a) "No intrinsic value" means that the cost of
1-15 removal and disposal of a vessel or structure that has been
1-16 abandoned or left in or on coastal waters exceeds the salvage value
1-17 of the vessel or structure.

1-18 (16-b) "Numbered vessel" means a vessel:

1-19 (A) for which a certificate of number has been
1-20 awarded by this state as required by Chapter 31, Parks and Wildlife
1-21 Code; or

1-22 (B) covered by a number in full force and effect
1-23 awarded under federal law or a federally approved numbering system
1-24 of another state.

1-25 SECTION 2. Section 40.108, Natural Resources Code, is
1-26 amended by amending Subsections (b) and (d) and adding Subsections
1-27 (d-1), (d-2), and (d-3) to read as follows:

1-28 (b) The commissioner may remove and dispose of or contract
1-29 for the removal and disposal of any vessel or structure described in
1-30 Subsection (a) and may recover the costs of removal, storage, and
1-31 disposal from the owner or operator of the vessel or
1-32 structure. Except as provided by Subsection (d-1), the [The]
1-33 recovered costs shall be deposited to the credit of the coastal
1-34 protection fund established by Section 40.151.

1-35 (d) The commissioner may dispose of the vessel or structure
1-36 in any reasonable and environmentally sound manner. The
1-37 commissioner shall give preference to disposal options that
1-38 generate a monetary benefit from the vessel or structure. If no
1-39 value may be generated from the vessel or structure, the
1-40 commissioner shall select the least costly method. Except as
1-41 provided by Subsection (d-1), proceeds [~~Proceeds~~] from the sale of
1-42 the vessel or structure shall be used for removal, storage, and
1-43 disposal costs, and any proceeds in excess of the cost of removal,
1-44 storage, and disposal shall be deposited to the credit of the
1-45 coastal protection fund.

1-46 (d-1) If the commissioner has actual notice that a person
1-47 holds a security interest in a vessel or structure subject to
1-48 removal or disposal under this section, notice must be given to the
1-49 person in the manner provided by Section 40.254. If the vessel or
1-50 structure is not removed within a reasonable time as specified in
1-51 the preliminary report under Section 40.254, the commissioner may
1-52 remove and dispose of, or contract for the removal and disposal of,
1-53 any vessel or structure described by Subsection (a). The interest
1-54 of the state in recovering removal, storage, and disposal costs
1-55 shall have priority over the interest of the holder of a security
1-56 interest in a vessel or structure described by Subsection (a).
1-57 Proceeds from the sale of the vessel or structure in excess of the
1-58 cost of removal, storage, and disposal shall be paid to the holder
1-59 of the security interest in the vessel or structure in an amount not
1-60 to exceed the amount necessary to satisfy the secured debt.

1-61 (d-2) For purposes of this section, the term "structure"
1-62 includes a vehicle as defined by Section 502.001, Transportation
1-63 Code, if the vehicle is:

1-64 (1) located in coastal waters; and

2-1 (2) in a wrecked, derelict, or substantially
 2-2 dismantled condition.

2-3 (d-3) The commissioner shall make information on abandoned
 2-4 vessels and structures accessible on the General Land Office's
 2-5 Internet website and in any other medium, as determined by the
 2-6 commissioner, to the public and to a person receiving notice as
 2-7 required by Section 40.254.

2-8 SECTION 3. Section 40.254, Natural Resources Code, is
 2-9 amended by amending Subsections (b-1), (c-1), (d), (e), (f), and
 2-10 (g) and adding Subsection (c-2) to read as follows:

2-11 (b-1) The preliminary report must:

2-12 (1) state the facts that support the commissioner's
 2-13 conclusion;

2-14 (2) in the case of a derelict vessel or structure,
 2-15 determine whether the vessel or structure is considered:

2-16 (A) a numbered vessel; or

2-17 (B) a vessel or structure that has no intrinsic
 2-18 value;

2-19 (3) recommend:

2-20 (A) that a penalty be imposed;

2-21 (B) that a certificate be suspended;

2-22 (C) that a derelict vessel or structure be
 2-23 removed or disposed of; or

2-24 (D) any combination of remedies under Paragraphs
 2-25 (A)-(C); and

2-26 (4) ~~(3)~~ if a penalty under Subdivision (3)(A)
 2-27 ~~(2)(A)~~ is recommended, recommend the amount of the penalty.

2-28 (c-1) The notice required by Subsection (c) must be given:

2-29 (1) by service in person or by registered or certified
 2-30 mail, return receipt requested; or

2-31 (2) if personal service cannot be obtained or the
 2-32 address of the person is unknown, by posting a copy of the notice on
 2-33 the facility, vessel, or structure and by publishing notice on the
 2-34 Internet website of the General Land Office and in the Texas
 2-35 Register [a newspaper with general circulation in the county in
 2-36 which the facility, vessel, or structure is located] at least two
 2-37 times within 10 consecutive days.

2-38 (c-2) The notice required by Subsection (c) must be given by
 2-39 posting a copy of the notice on a derelict vessel or structure if
 2-40 the derelict vessel or structure has been determined to have no
 2-41 intrinsic value under Subsection (b-1).

2-42 (d) Not later than the 20th day after the date on which the
 2-43 notice is served, the person charged with the violation or a person
 2-44 claiming ownership of a vessel or structure for which notice is
 2-45 posted under Subsection (c-2) may consent in writing to the report,
 2-46 including the commissioner's recommendations, or make a written
 2-47 request for a hearing.

2-48 (e)(1) If the person charged with the violation or a person
 2-49 claiming ownership of a vessel for which notice is posted under
 2-50 Subsection (c-2) consents to the commissioner's recommendations or
 2-51 does not timely respond to the notice, the commissioner by order
 2-52 shall take the recommended action or order a hearing to be held on
 2-53 the findings and recommendations in the report.

2-54 (2) If the commissioner takes the recommended action,
 2-55 the commissioner shall serve written notice of the decision to the
 2-56 person in the same manner as provided for notice of the preliminary
 2-57 report. The person must comply with the order, including a removal
 2-58 order, and pay any penalty assessed.

2-59 (f)(1) If the person charged with the violation or a person
 2-60 claiming ownership of a vessel for which notice is posted under
 2-61 Subsection (c-2) requests a hearing, the commissioner shall order a
 2-62 hearing and shall give written notice of that hearing.

2-63 (2) The hearing shall be held by a hearing examiner
 2-64 designated by the commissioner.

2-65 (3) The hearing examiner shall make findings of fact
 2-66 and promptly issue to the commissioner a written decision as to the
 2-67 occurrence of the violation and a recommendation on suspension of
 2-68 the discharge prevention and response certificate, the amount of
 2-69 any proposed penalty, the removal or disposal of the derelict

3-1 vessel or structure, or any combination of those remedies.
 3-2 (4) Based on the findings of fact and the
 3-3 recommendations of the hearing examiner, the commissioner by order
 3-4 may:
 3-5 (A) find that a violation has occurred and assess
 3-6 a penalty;
 3-7 (B) suspend a discharge prevention and response
 3-8 certificate;
 3-9 (C) order the removal or disposal of a derelict
 3-10 vessel or structure;
 3-11 (D) order any combination of those remedies; or
 3-12 (E) find that no violation occurred.

3-13 (5) The commissioner shall serve notice to the person
 3-14 of the commissioner's decision. If the commissioner finds that a
 3-15 violation has occurred and assesses a penalty, suspends a discharge
 3-16 prevention and response certificate, or orders the removal or
 3-17 disposal of a derelict vessel or structure, the commissioner shall
 3-18 give to the person written notice of:

- 3-19 (A) the commissioner's findings;
- 3-20 (B) the amount of the penalty or the terms of the
- 3-21 suspension or removal or disposal; and
- 3-22 (C) the person's right to judicial review of the
- 3-23 commissioner's order.

3-24 (g)(1) Not later than the 30th day after the date on which
 3-25 the commissioner's order is final, the person charged with the
 3-26 violation or a person claiming ownership of a vessel for which
 3-27 notice is posted under Subsection (c-2) shall comply with the order
 3-28 or file a petition for judicial review.

3-29 (2) On failure of the person to comply with the order
 3-30 or file a petition for judicial review, the commissioner may refer
 3-31 the matter to the attorney general for collection and enforcement.

3-32 (3) Judicial review of the order or decision of the
 3-33 commissioner shall be under Subchapter G, Chapter 2001, Government
 3-34 Code.

3-35 SECTION 4. This Act takes effect September 1, 2009.

3-36 * * * * *