

BILL ANALYSIS

C.S.H.B. 787
By: Kuempel
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a law enforcement agency has the authority to take an abandoned motor vehicle, watercraft, or outboard motor into custody and provide for the public sale of the property if the current owner fails to claim the property. However, an abandoned aircraft is not included among the motor vehicles a law enforcement agency is authorized to take into custody. Like abandoned motor vehicles and watercraft, abandoned planes and other aircraft are a nuisance and the sites on which the craft is located can become a junkyard if the vessel is not disposed of in a timely manner. These sites are often located near a residential community, consequently devaluing residential property. C.S.H.B. 787 seeks to remedy this situation by revising statutory provisions relating to abandoned, wrecked, dismantled, discarded, and inoperable aircraft and vessels.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Parks and Wildlife Department and the Parks and Wildlife Commission in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 787 amends the Parks and Wildlife Code to authorize a person to apply for a certificate of title for an abandoned vessel or outboard motor found on the person's property. The bill authorizes the Parks and Wildlife Department (TPWD) to cancel the certificate for the abandoned vessel or outboard motor and issue a new certificate to the applicant under the following conditions:

- the applicant executes and files a bond with TPWD that is in the form prescribed by TPWD; that is issued by a person authorized to act as a surety business in Texas; that is in an amount equal to 1-1/2 times the value of the abandoned vessel or outboard motor as determined by TPWD; and that is conditioned to indemnify all prior owners and lienholders and all subsequent purchasers of the abandoned vessel or outboard motor or persons who acquire a security interest in the vessel or outboard motor, and their successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, resulting from the issuance of the certificate of title for the abandoned vessel or outboard motor or a defect in or undisclosed security interest in the right, title, or interest of the applicant to or in the abandoned vessel or outboard motor;
- the applicant proves to the satisfaction of TPWD that the abandoned vessel or outboard motor is not stolen; that issuance of a certificate of title would not defraud the owner or a lienholder of the abandoned vessel or outboard motor; that at least 30 days before the applicant applied for the certificate, the applicant contacted the applicant's local law enforcement agency through certified mail to report that the vessel or outboard motor is abandoned; and that the local law enforcement agency has not taken the abandoned vessel or outboard motor into custody or informed the applicant of the agency's intent to take the abandoned vessel or outboard motor into custody; and
- the applicant posts notice of the certificate of title application in the manner and for a period of time designated by rule by TPWD.

C.S.H.B. 787 establishes that a person who executes and files a bond conditioned to indemnify all prior owners and lienholders and all subsequent purchasers or persons with a security interest in the abandoned vessel or outboard motor has a right of action to recover on the bond executed and filed with TPWD for a breach of a condition of the bond. The bill prohibits the aggregate liability of the surety to all persons from exceeding the amount of the bond. The bill specifies that such a bond expires on the third anniversary of the date the bond became effective. The bill requires TPWD to return an expired bond to the person who filed the bond unless TPWD has been notified of a pending action to recover on the bond. The bill requires TPWD, on return of the bond, to issue a certificate of title to the person to whom the bond is returned. The bill establishes that if the abandoned vessel or outboard motor is not claimed before TPWD issues a certificate of title to a person, the owner or lienholder waives all rights and interests and consents to the cancellation of the certificate for the abandoned vessel or outboard motor. The bill establishes that the applicant for the certificate of title for the abandoned vessel or outboard motor takes title free and clear of all liens and claims of ownership. The bill authorizes the Parks and Wildlife Commission by rule to define additional acceptable situations in which certificates of title may be issued after the filing of a bond. The bill makes its provisions relating to a title for an abandoned vessel or outboard motor inapplicable to a vessel or outboard motor that is subject to a contract or lien under provisions of law relating to self-service storage facility liens and miscellaneous liens. The bill defines "abandoned vessel or outboard motor."

C.S.H.B. 787 amends the Transportation Code to add aircraft as a type of motor vehicle to provisions setting out the procedures for the seizure and auction of abandoned motor vehicles. The bill specifies that, for purposes of the requirement to send a notice of abandonment to each recorded lienholder, the lienholders for an abandoned aircraft are those recorded with the Federal Aviation Administration (FAA) or the secretary of state for the aircraft. The bill requires a law enforcement agency that takes into custody an aircraft to contact the FAA, in the manner described by provisions relating to the disposal of an abandoned aircraft, to attempt to identify the owner of the aircraft before sending the required notice of abandonment. The bill redefines "junked vehicle" and specifies that it includes a motor vehicle, aircraft, or watercraft. The bill establishes that provisions relating to junked vehicles, public nuisance, and abatement apply to a motor vehicle that does not have lawfully attached to it an unexpired license plate and a valid motor vehicle inspection certificate, an aircraft that does not have lawfully printed on it an unexpired federal aircraft identification number registered under FAA aircraft registration regulations in the United States Code of Federal Regulations, and a watercraft that does not have lawfully on board an unexpired certificate of number. The bill requires the Texas Department of Motor Vehicles (TxDMV) to notify TPWD of the removal of a watercraft that is a public nuisance on receipt of notice of the removal. The bill requires TPWD to immediately cancel the certificate of title issued for the watercraft upon receipt of the notice from TxDMV. The bill adds aircraft and watercraft to provisions relating to a hearing on abatement of a junked vehicle that is a public nuisance. The bill defines "aircraft" and makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 787 contains a provision not in the original defining "abandoned vessel or outboard motor." The substitute contains a provision not in the original authorizing a person to apply for a certificate of title for an abandoned vessel or outboard motor found on the person's property and specifying the conditions under which the Parks and Wildlife Department (TPWD) is authorized to cancel the certificate of title for the vessel or motor and issue a new certificate. The substitute contains a provision not in the original describing the circumstances under which TPWD may issue a certificate of title for an abandoned vessel or outboard motor after the filing of a bond

with TPWD, procedures related to the bond, and the authority of the Parks and Wildlife Commission by rule to define acceptable situations in which certificates of title may be issued after the filing of the bond. The substitute contains a provision not in the original establishing that an applicant who receives a certificate of title from TPWD takes title free and clear of all liens and claims of ownership. The substitute contains a provision not in the original establishing that certain of the substitute's provisions relating to a title for an abandoned vessel or outboard motor are inapplicable to a vessel or outboard motor that is subject to a certain contract or lien.

C.S.H.B. 787 contains a provision not in the original requiring a law enforcement agency that takes an aircraft into custody to contact the Federal Aviation Administration to attempt to identify the owner of the aircraft before sending the required notice of abandonment. The substitute contains a provision not in the original requiring the Texas Department of Motor Vehicles to notify TPWD of the removal of a watercraft that is a public nuisance and requiring TPWD to immediately cancel the certificate of title issued for the watercraft on receipt of the notice. The substitute differs from the original in nonsubstantive ways.