



Oregon

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June 12, 2013

Senate Committee on Rules
The Honorable Diane Rosenbaum, Chair
The Honorable Ted Ferrioli, Vice Chair

RE: Testimony on House Bill 2233 -A6

Dear Committee Chair, Vice Chair and Members,

This testimony is submitted in support of the –A6 amendment to HB 2233. This amendment is the result of extensive work with members of the Rural Communities and Economic Development Committee and represents a compromise that meets the intent of the bill but also adds limitations to reduce the potential for unintended consequences.

This bill modifies Chapter 830, Small Watercraft, streamlining the process for seizing and disposing of abandoned vessels. The bill will allow removing authorities to seize and dispose of derelict vessels (vessels in a condition that constitutes a hazard) and expands the criminal offense to include failure to remove an abandoned vessel and possession of a derelict vessel on the waters of this state.

In addition, this bill modifies Chapter 466 and Chapter 468B to include “ships in imminent danger of sinking” in the definition of threatened spill or release of oil or hazardous material.

There are four issues identified that House Bill 2233 -A6 proposes to remedy:

ISSUE #1: Ports and law enforcement are not always willing or able to act as removing authorities

The ability of public agencies to deal with abandoned vessels on their property is hindered by the limited definition of “removing authority.” Currently the definition of a “removing authority” refers to ORS 98.245, which defines “removing authority” as “a sheriff’s office, a municipal police department, a state police office, a law enforcement agency created by intergovernmental agreement, or a port.” This means that if a vessel is abandoned in a park or on state or federally owned lands, the public agency landowner must ask a law enforcement agency to act as the removing authority; something law enforcement agencies are not willing to do because of the time, expense, and liability.

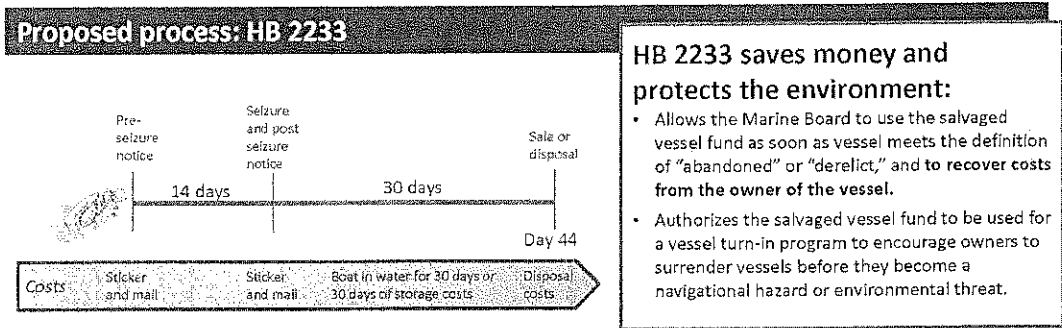
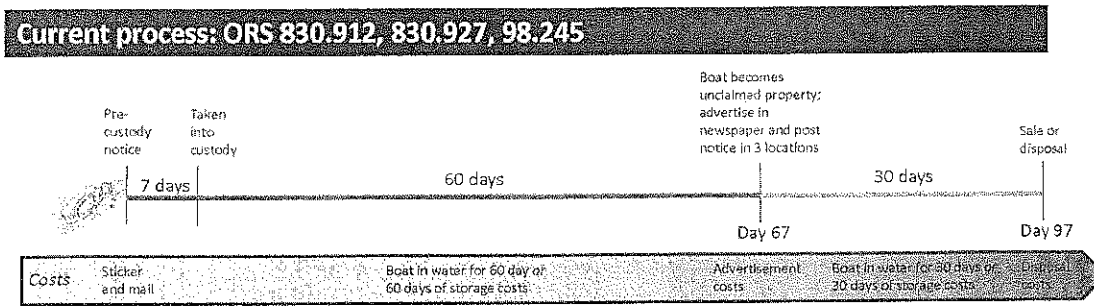
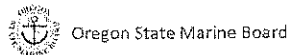
Solution: Expand the definition of removing authorities (now called **enforcement agencies** in HB 2233) to include all public bodies that have responsibility for the land or water on which an abandoned vessel or a derelict vessel is located. Define enforcement agency within Chapter 830 (in definitions) instead of referring to the definition in 98.245. This proposed solution is similar to the abandoned vehicle statutes which define removing authorities within Chapter 819: ORS



ISSUE #2: The seizure and notification process is long and burdensome

The current notification, seizure, and disposal process for boats is more than 90 days, only if no hearings are held to challenge the proceedings (see graphic in the attachment). For comparison, abandoned motor vehicles can be disposed of after only 30 days (ORS 819.210).

Storing vessels is not as easy as towing an abandoned vehicle to an impound lot. Often, the vessels are too large to be trailered or are so dilapidated that they can't be removed without destroying them, so the vessels are left in place in the water, typically past 90 days.



Solution: Reduce the "holding time" to 30 days which lowers the public safety and environmental threat posed by vessels in the water and lowers the cost for vessels held in custody on land. In the -A6 amendment, we agreed to extend the pre-seizure notice from 7 days to 10 business days.

ISSUE #3: Enforcement agencies have difficulty in meeting the 25% match requirement

The Marine Board's Abandoned Boat Removal and Cleanup subaccount is authorized to pay for the expenses of the board or reimbursing a removing authority for no more than 75% of the removal and disposal costs of abandoned vessel, but only if the enforcement agency has been unsuccessful in collecting reimbursement from the vessel's owner. This means that the enforcement agency must initially pay for any salvage, removal, clean-up, and disposal cost, document that the owner cannot reimburse them, and then the removing authority can receive at most 75% reimbursement from the Marine Board. Information from the County Sheriff's Offices indicated that the high cost of removal (the initial cash outlay and the 25% match) makes them less willing to act as removing authorities.

Solution: Lower the match requirements for the enforcement agencies. The State of Washington and the State of California both reimburse up to 90% of the total costs to eligible public agencies. The coordinator for the Washington program said that they have had more interest in their program, and more proposals, since their match requirement was lowered from 25% to 10%. Since the Oregon Abandoned Vessel Account is funded by recreational boat registration fees, it may be reasonable to lower the match requirement for the removal of recreational boats (those registered with the Marine Board) to 10%, while keeping the match requirement at 25% for commercial boats (such as out-of-service fishing vessels).

ISSUE #4: Waiting for a vessel to be abandoned is expensive and inefficient

Before vessels are abandoned they have almost always been in as "unseaworthy" condition for months or years. As time goes by, the risk that these vessels will become a hazard to navigation or pollute the environment increases, adding to the potential costs to the public. Additionally, if the vessels deteriorate to the point that they sink, the removal costs are 3 to 4 times higher than they would have been had the vessels been floating. It is more cost-effective to intervene earlier and have a process that compels owners to remedy the derelict condition of their vessels or remove them from the waters of this state. Furthermore, since use of the Abandoned Boat Removal and Cleanup subaccount is currently limited to post-abandonment and removal reimbursements, we are not able to be proactive and pay for the removal of "derelict" vessels when they would be less expensive to remove.

Solution: Add definitions for "abandoned vessel" and "derelict vessel" and specify that both types of vessels can be seized and removed if action is not taken by the owner. Make it a Class A Violation for failure to remove an abandoned vessel after notification or failure to remedy the derelict condition of a vessel after notification. Expand the use of the Abandoned Vessel subaccount (re-named Salvaged Vessel subaccount) to pay for derelict vessel seized by enforcement agencies or surrendered by their owners. Allow the Salvaged Vessel subaccount to be used for a "Vessel Turn In Program" to remove vessels before they are abandoned. The state of California has in place a successful pilot "Vessel Turn-In Program" (VTIP) that removes at-risk vessel at a fraction of the cost of removing abandoned vessels. Recent figures from California show that abandoned boats cost on average \$4,162 to remove, whereas boats surrendered through VTIP cost on average only \$1,604 - a savings of 62%. Additionally, agencies that participate in California's VTIP report a savings in staff time of 40% - 75% compared to the time needed to deal with abandoned vessels.

In closing, the Marine Board is ready to remove procedural obstacles that prevent removing abandoned vessels from the waterway using the funds already allocated for this purpose. HB 2233 –A6 also allows the Marine Board and removing authorities to be proactive by working with vessel owners and offering options to keep costs at a minimum while protecting the safety of other boaters and the environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Brewen". The signature is fluid and cursive, with the first name "Scott" and last name "Brewen" clearly distinguishable.

Scott Brewen, Director

Attachment

Section by section explanation of the revisions:

Section 2 (replaces 830.907): Definitions

Adds the definitions of "abandoned vessel," "derelict vessel," "enforcement agency," "owner," and "vessel."

The current statutes only define the "offense of abandoning a boat, floating home or boathouse;" there is no definition of "abandoned boat" and no distinction between abandoned and derelict vessels. The "offense of abandoning a boat" implies that an abandoned boat is one that is believed to be "abandoned" and has been "left" on public or private property without permission. Merriam-Webster dictionary defines abandon as "to give up with the intent of never again claiming a right or interest in." However, if the owner is still very much involved with the vessel (perhaps visiting or even living on the vessel), it is more difficult to make the argument that the vessel has been "abandoned," even if it is at risk of sinking, causing pollution, or obstructing a waterway. Therefore, in addition to adding a definition of "abandoned vessel," the new language expands on the idea of a hazardous vessel and defines that as a "derelict." "Derelict vessel" means a vessel that is on the waters of this state and that is: sunk or in imminent danger of sinking; obstructing a waterway; endangering life or property; or in danger of becoming an environmental hazard because of leaking fuel, sewage or other pollutants.

Currently the definition of a "removing authority" refers to ORS 98.245, which defines "removing authority" as "a sheriff's office, a municipal police department, a state police office, a law enforcement agency created by intergovernmental agreement, or a port." The new language gets rid of "removing authority" and replaces it with "enforcement agency" which means a law enforcement agency, a federal agency, the State Marine Board or any other public body, as defined in ORS 174.109, that has responsibility for land or water on which an abandoned vessel or a derelict vessel is located.

Section 3 (replaces 830.912): Authority to seize abandoned or derelict vessel

The current statute gives removing authorities the power to seize vessels that are believed to be abandoned after the required notification. The new language clarifies that an enforcement agency can seize an abandoned vessel if it is not moved to a lawful location in the time specified in the notice and/or can seize a derelict vessel if the problems identified in the notice are not corrected in the time specified in the notice. The -A6 amendment only authorizes State Marine Director or designee to declare a vessel as derelict and may only do so with probable cause, documented in writing. A derelict vessel in imminent danger of sinking may only be seized if the State Marine Director has documented facts that the vessel is in imminent danger of sinking.

The new language also clarifies the actions an enforcement agency can take once a vessel is identified as abandoned or derelict, including: upon probable cause entering and inspecting the interior of the vessel for the purpose of identifying the ownership of the vessel or for the purpose of assessing whether the vessel poses a threat to life, property or the environment; securing the vessel in such a manner as to prevent harm to life or damage to property or to prevent the vessel from becoming a hazard to navigation; taking action to mitigate any environmental threat the vessel poses; and salvaging, towing and storing the vessel.

Section 4 (replaces 830.917): Preseizure notice

The new language will expand on the information required in the current notice to include statements that

- Vessels that are believed to be abandoned must be moved to a lawful location in the time specified or agreed upon with the enforcement agency or the owner may be issued a violation for failure to remove an abandoned vessel;
- If the vessel is derelict, the problems noted in the notice must be remedied by the time specified or agreed upon with the enforcement agency or the owner may be issued a violation for possession of a derelict vessel; and
- If a vessel is seized the owner of the vessel will be liable for the costs of salvage, towing, and storage and the vessel may be destroyed or sold if those costs are not paid.

Section 5 (replaces 830.914): Seizure without notice

The current statutes give the authority to enforcement agencies to immediately seize, without notice, vessels that are a hazard or obstruction. The new language states that nothing in these statutes affects the ability of an enforcement agency to seize without notice a vessel that presents a hazard to navigation or a threat to public health or safety (i.e. an emergency situation). However, if an enforcement agency wants to dispose of a vessel seized without notice, the enforcement agency must follow the post-seizure notification provisions.

Section 5a (new language): Manner and time of seizure

In the current statutes it is not clear how and when enforcement agencies "take custody" of vessel, so this new section clarifies that seizure occurs when the enforcement agencies takes physical control of vessel (by towing or other means) or when the vessel is marked with a seizure sticker or buoy (for sunk vessels).

Section 6 (replaces part of 98.245): Post seizure notice

The current statutes do not require a post seizure notice; rather they require that vessels be advertised as "unclaimed property in the possession of a law enforcement agency" in a newspaper and in three locations in the area. This new language would require a post-seizure notice be placed on a website maintained by the enforcement agency and mailed to the last know owner of the vessel. This post seizure notice would re-state the information in the pre-seizure notice:

- The time that the vessel was seized, the name, address and telephone number of the enforcement agency, and the reason the vessel was seized;
- That the owners of the vessel are liable for salvage, towing, storage and disposal costs incurred by the enforcement agency by reason of the seizure, and the amount of those costs that have accrued as of the date of the notice.
- That title to the vessel will vest in the enforcement agency if the costs of salvage, towing and storage are not paid, and the date by which those costs must be paid.
- That the owner may request a hearing to challenge the reasonableness of any salvage, towing or storage costs, and the time and manner for requesting a hearing.
- That the vessel and its contents may be immediately reclaimed by presenting proof of ownership or right to possession and payment of the costs that have accrued.

Section 7 (replaces 8302.924): Hearing

The hearing process is essentially the same; this section was re-written for clarity and brevity. An additional clarification was made that if the enforcement agency is a state agency, the determination of the enforcement agency is an order other than a contested case and is subject to review under ORS 183.484. If the enforcement agency conducting a hearing under this section is not a state agency, judicial review of the order is as provided in ORS 34.010 to 34.100.

Section 8 (replaces part of 830.909): Liability for costs of salvage, towing, and storage

The new language is in the same spirit as the current statutes, but the new language further clarifies that any order imposing liability for those costs is subject to judicial review as provided in section 7 (11) of this 2013 Act. This statement will support our efforts to do cost recovery from owners of abandoned and derelict vessels. Currently, we often wait to take action on abandoned vessels until we have determined the owner does not have the means to undertake the removal. If we have a solid cost-recovery process in place, we can remove vessels as soon as the seizure notice expires and then attempt to recover costs.

Section 9 (replaces 830.927 and part of 98.245): Reclamation of seized vessels

The new language eliminates reference to the 60 day custody period and instead states that title to the vessel will vest with the enforcement agency if all costs are not paid by the date specified in the post-seizure notice. The owner of the vessel must also establish to the satisfaction of the enforcement agency, that the owner is able to move the vessel to a place where it can be lawfully kept before the vessel will be returned.

Section 10 (new section): Liability of enforcement agency

Removing authorities (law enforcement agencies and ports) are hesitant to take custody of abandoned or derelict vessels because they do not have clear civil liability protection when investigating, securing, salvaging, removing, storing, and disposing of them. This new language states that an enforcement agency (and anyone the agency contracts with for removal services) is not liable to an owner of an abandoned vessel or a derelict vessel for any damages resulting from the seizure of the vessel to the extent that the enforcement agency did not act or fail to act in a negligent manner and that negligence contributed to the damage.

Section 11 (new section): Use of contractor

This new language makes it explicit that an enforcement agency may enter into a contract with any person to carry out the provisions of this series (for salvage, towing, storage, disposal, etc.). This is similar to the abandoned motor vehicle statutes 819.104(2)(b).

Section 12 (replaces 830.909): Offenses

The new language makes it much clearer when the offense occurs and should make this more enforceable. The current statute says that a person commits the offense of abandoning a vessel if he or she leaves the vessel on public or private property without permission. However, is unclear at what point the offense actually occurs. Is it one day without permission, one week, or one month? What if the owner claims he or she was intending to retrieve the vessel, and it had not been abandoned?

The new language changes the offense to be the failure to remove an abandoned vessel after notification. The time at which this offense occurs is clear – if the owner fails to take action on the vessel within the times specified in the pre-seizure notice, the owner has committed an offense.

The new language would also make it an offense to fail to remedy the derelict condition of a vessel on the waters of the state after notification.

Both offenses are listed Class A Violations in the –A6 amendment.

Section 13 (amends 830.926): Salvaged Vessel subaccount

The amendments in this section rename the “Abandoned Boat Removal and Cleanup Subaccount” as the “Salvaged Vessel Subaccount” and allow for use of the Salvaged Vessel subaccount as soon as a boat meets the definition of derelict or abandoned (instead of after we have been unsuccessful in collecting reimbursement from the owner). Again, this will allow us to be more proactive by quickly removing hazards from the water and then pursuing cost recovery from the owner. Second, the amendments authorize up to 90% reimbursement to enforcement agencies for the removal of abandoned and derelict recreational boats, floating homes, boathouses, and other floating structures, while leaving the cap at 75% reimbursement for abandoned and derelict commercial vessel. Finally, the amendments authorize use of the Salvaged Vessel subaccount for a Vessel Turn-in Program.