

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 143

(Delegate Kipke, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

State Boat Act - Abandoned or Sunken Vessels - Removal

This bill makes changes to provisions authorizing the Department of Natural Resources (DNR) to seize, remove, and take into custody abandoned or sunken vessels, including (1) requiring the department to take custody of specified abandoned or sunken vessels without advance notice to the last known registered owner; (2) modifying the definition of “abandoned or sunken vessel”; and (3) prohibiting the department from using Natural Resources Police (NRP) funds for removal or storage of abandoned or sunken vessels. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: General fund expenditures may increase annually beginning in FY 2021, by an indeterminate amount. *Under one illustrative scenario*, general fund expenditures increase by approximately \$214,000 each fiscal year. General fund revenues may increase minimally.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Requirement to Take Custody of Specified Vessels Without Advance Notice

The bill requires DNR – if the department determines that an abandoned or sunken vessel poses an immediate hazard or obstruction to navigation, a potential health hazard, or a potential environmental hazard – to take the vessel into custody without providing advance notice to the last known registered owner of the vessel. DNR must keep a written record of the determination, including the actual or potential hazards mitigated by removal of the vessel. Consistent with existing notice requirements, as soon as reasonably possible but not later than 15 days after DNR takes an abandoned or sunken vessel into custody pursuant to the above requirement, the department must send a notice, by certified mail, return receipt requested, bearing a postmark from the U.S. Postal Service to the last known registered owner of the vessel and to each known secured party, as shown on the records of the department. The notice must describe the actual or potential hazard mitigated by removal of the vessel.

The bill also establishes that in other cases in which DNR has taken a vessel into custody, the notice sent after the vessel is taken into custody must be sent to each *known* secured party rather than each secured party.

Modification of “Abandoned or Sunken Vessel” Definition

The bill modifies a portion of the definition of “abandoned or sunken vessel” that includes a vessel that has remained at a private marina or boatyard, or property operated by a private marina or boatyard, for more than 90 days without the consent of the owner or person in control of the property. The bill reduces the duration for which the vessel must have remained without consent from 90 days to 60 days.

The bill also modifies a portion of the definition of “abandoned or sunken vessel” that includes a vessel that (1) has been found adrift or unattended in or upon the waters of the State; (2) is found in a condition of disrepair as to constitute a hazard or obstruction to the use of the waters of the State or presents a potential health or environmental hazard; and (3) is not specified historic property. The bill breaks up the second portion of that definition (“is found in a condition of disrepair...”) so that a vessel must be found in a condition of disrepair – *or* – present a hazard or obstruction to the use of the waters of the State (not both), or present a potential health or environmental hazard.

Prohibition on Use of Specified Funds

The bill prohibits DNR from using funds budgeted for NRP for the purpose of removing or storing abandoned or sunken vessels.

Current Law:

Authorization to Seize, Remove, and Take into Custody Abandoned or Sunken Vessels

DNR is authorized to seize, remove, and take into custody any abandoned or sunken vessel. The department may use its own personnel, equipment, and facilities or use other persons, equipment, and facilities for removing, preserving, or storing abandoned or sunken vessels. DNR, or a person removing, preserving, or storing an abandoned or sunken vessel on the department's behalf, may not be held liable for any damage to an abandoned or sunken vessel which may occur during removal, storage, or custody of the vessel. DNR may delegate its authority to remove and dispose of abandoned or sunken vessels to any local jurisdiction that consents to the delegation.

“Abandoned or sunken vessel” means any vessel that:

- is left illegally or has remained without permission for more than 30 days on public property, including public marinas, docks, or boatyards;
- has remained for more than 90 days at a private marina or boatyard, or property operated by a private marina or boatyard, without the consent of the owner or person in control of the property;
- has remained for more than 30 days at a private dock or at or near waters' edge on private property without the consent of the owner or person in control of the property;
- has remained on any other private property for more than 180 days without the consent of the owner or person in control of the property; or
- (1) has been found adrift or unattended in or upon the waters of the State; (2) is found in a condition of disrepair as to constitute a hazard or obstruction to the use of the waters of the State or presents a potential health or environmental hazard; and (3) is not specified historic property.

Required Notice

No later than 15 days before an abandoned or sunken vessel is seized, removed, or taken into custody, DNR must send a specified notice to the last known registered owner of the vessel, as shown on the department's records. In addition, as soon as reasonably possible, but not later than 15 days after the department takes an abandoned or sunken vessel into custody, it must send a specified notice to the last known registered owner of the vessel and to each secured party, as shown on the department's records.

The notices must (1) describe the vessel; (2) give the location where the vessel is being held; (3) inform the owner and secured party of a right to reclaim the vessel within three weeks of receipt of the notice sent after the department takes custody of the vessel upon payment to the department of any expenses incurred during removal and custody of the vessel; and (4) state that failure to claim the vessel will constitute a waiver of all right, title, and interest in the vessel, and a consent to the department's disposition of the vessel. If the department is unable to determine the last registered owner or the identity of any secured party, or if a notice is returned as undeliverable, the department must give notice by publication in at least one newspaper of general circulation in the area where the abandoned or sunken vessel was found.

Disposal of Vessels Not Claimed

If the owner or secured party of an abandoned or sunken vessel fails to claim the vessel within three weeks after notice is given, DNR may sell the vessel at public auction, proceed to receive title to the vessel, or otherwise dispose of the vessel.

Background: DNR indicates it removed and destroyed 67 abandoned/derelict vessels in 2019, not including removals by local jurisdictions under grants provided by DNR. The department gives out approximately \$100,000 each fiscal year to local governments to address hazards to navigation, a portion of which is used by local jurisdictions to remove abandoned vessels.

DNR's NRP Manual of Policies, Procedures, and Regulations, which describes the process to be followed by officers and DNR's Abandoned Boat and Debris Program in responding to reports of abandoned vessels, lists factors to be considered in determining whether a vessel is abandoned:

- the location of the vessel in relation to the navigable channel and other navigational traffic patterns;
- the criteria in statute (the definition of "abandoned or sunken vessel" described above); and

- the location of the obstruction in relation to other obstructions or aids to navigation.

The manual also distinguishes between circumstances in which an abandoned vessel is a hazard or not a hazard, indicating the State will remove a boat immediately if it is a hazard to navigation or is a hazard and in a state of disrepair but will follow due diligence according to the statutory provisions governing abandoned or sunken vessels if the vessel is not a hazard.

State Expenditures: General fund expenditures may increase annually beginning in fiscal 2021 to the extent the bill results in DNR removing and taking custody of additional vessels as a result of the bill, due to (1) the changes to the definition of “abandoned or sunken vessel” or (2) the requirement that DNR take an abandoned or sunken vessel into custody (without advance notice) if it determines it poses an immediate hazard or obstruction to navigation, a potential health hazard, or a potential environmental hazard. A reliable estimate of any such increase cannot be made at this time, as the number of additional vessels taken into custody by DNR as a result of this bill cannot be predicted.

For illustrative purposes, if it is assumed that 15 additional vessels are removed and taken into custody each fiscal year as a result of the bill, general fund expenditures increase by \$214,000 annually, beginning in fiscal 2021, reflecting the cost of hiring an additional hydrographic engineering associate to manage operations associated with removal and custody of those additional vessels, plus contractual services and other costs associated with the removal, custody, storage, and potential disposal of the vessels. DNR indicates that the contractual services and other costs associated with each vessel could vary significantly, depending on factors such as the size and location of the vessel and length of storage of the vessel, but an approximate average cost of \$10,000 per vessel is used for this illustrative example.

Existing abandoned or sunken vessel removals are supported by special funds from the Waterway Improvement Fund (WIF), but any additional expenditures resulting from this bill are assumed to be covered with general funds since there are not excess funds available in WIF.

The bill’s prohibition against the use of funds budgeted for NRP for the purpose of removing or storing abandoned or sunken vessels is not expected to materially affect DNR’s existing funding associated with abandoned or sunken vessel removal.

State Revenues: General fund revenues may increase to the extent, as authorized in statute, (1) expenses incurred during the removal and custody of any additional vessels are recovered from an owner or secured party when a vessel is reclaimed by the owner or secured party or (2) any of those additional vessels that are unclaimed are sold by DNR at

public auction. Based on indications from DNR, however, any revenues collected are likely to be minimal.

Small Business Effect: Small business contractors may meaningfully benefit from the additional contractual services DNR may require under the bill. DNR indicates that the contractors it currently uses for abandoned or sunken vessel removals are primarily small businesses.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 219 (Senator Elfreth, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources; Maryland Department of Planning; Anne Arundel, Baltimore, Dorchester, and Howard counties; City of Laurel; Department of Legislative Services

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Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510