



House of Representatives

File No. 639

General Assembly

February Session, 2006 **(Reprint of File No. 361)**

House Bill No. 5658
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 27, 2006

**AN ACT CONCERNING THE REMOVAL OF ABANDONED SUNKEN
VESSELS.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 15-3a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 For the purposes of this chapter:

4 (1) "Derelict vessel" means any vessel, scow, lighter or similar
5 floating structure or part thereof, whether or not moored, anchored or
6 made fast to shore, that is broken or altered to such an extent that it
7 will not keep afloat with ordinary care;

8 [(a)] (2) "Harbor" means a place on navigable waters, as defined by
9 this section, where water-borne commercial or recreational traffic
10 enters for the purpose of anchorage or docking or the unloading or
11 receiving of cargo, supplies, equipment, fuel or passengers;

12 [(b)] (3) "Navigable waters" means waters which are subject to the
13 ebb and flow of the tide shoreward to their mean high-water mark;

14 [(c)] (4) "Navigable waterways" means waters which are physically
15 capable of supporting water-borne traffic, and subject to the ebb and
16 flow of the tide.

17 Sec. 2. Section 15-11a of the general statutes is repealed and the
18 following is substituted in lieu thereof (*Effective from passage*):

19 (a) [Any owner, agent or operator of any vessel, scow, lighter or
20 similar floating structure lying within the limits of any river or harbor
21 who causes or permits the same to be broken or altered to such an
22 extent that it will not keep afloat with ordinary care, or grounds such
23 craft or leaves any part thereof in any river or harbor, shall be fined not
24 more than five hundred dollars or imprisoned not more than six
25 months or both and the] A duly authorized harbor master shall
26 determine whether a vessel is a derelict vessel. Upon such
27 determination, the Commissioner of Transportation, such harbor
28 master or a duly authorized representative of a municipality may
29 cause [such vessel, scow, lighter or similar floating structure] such
30 derelict vessel to be removed at the expense of [such] any owner, agent
31 or operator of such derelict vessel and may recover the expense of such
32 removal, together with the costs and expenses incident to such
33 removal, including legal expenses and court costs incurred in such
34 recovery, from the owner, agent or operator of such vessel in an action
35 founded upon this section. The last owner of record of such vessel
36 shall be responsible for such vessel. After consultation with the
37 Commissioner of Transportation, the Commissioner of Environmental
38 Protection may consider any such [sunken or grounded vessel, scow,
39 lighter or similar structure] vessel to be an encroachment subject to the
40 provisions of sections 22a-359 to [22a-363,] 22a-363f, inclusive.

41 (b) Prior to removing and taking such derelict vessel into custody,
42 the Commissioner of Transportation, a duly authorized harbor master
43 or a duly authorized representative of a municipality shall make a
44 reasonable attempt to notify the owner, agent or operator of the vessel
45 and shall allow such owner, agent or operator to make arrangements
46 for removal of the vessel. Such notification shall inform the owner,

47 agent or operator that, pursuant to this section, if the vessel is not
48 removed within twenty-four hours of notification, it shall be removed,
49 taken into custody and stored at the owner, agent or operator's
50 expense.

51 (c) Prior to removing a derelict vessel, the Commissioner of
52 Transportation, a duly authorized harbor master or a duly authorized
53 representative of a municipality shall affix to such vessel a readily
54 visible notification sticker. The notification sticker shall contain the
55 following information: (1) The date and time the notification sticker
56 was affixed to the vessel, (2) a statement that, pursuant to this section,
57 if the vessel is not removed within twenty-four hours of the time the
58 sticker was affixed, it shall be taken into custody and stored at the
59 owner's expense, (3) the location and telephone number where
60 additional information may be obtained, and (4) the identity of the
61 person who affixed the sticker.

62 (d) If the derelict vessel is not removed by the owner, agent or
63 operator within the time period provided in subsection (c) of this
64 section, the Commissioner of Transportation, a duly authorized harbor
65 master or a duly authorized representative of a municipality may
66 direct that such vessel be removed and taken into custody and may
67 cause the same to be stored in a suitable place.

68 (e) If a derelict vessel is removed and taken into custody pursuant to
69 subsection (d) of this section, the Commissioner of Transportation, a
70 duly authorized harbor master or a duly authorized representative of a
71 municipality shall give written notice, by certified mail, return receipt
72 requested, to the owner, agent or operator of such vessel, if known,
73 which notice shall state: (1) The vessel has been removed, taken into
74 custody and stored, (2) the location from which the vessel was
75 removed, and (3) that the vessel may be disposed of after fifteen days
76 if the market value of such vessel, as determined by a certified marine
77 surveyor, does not exceed two thousand dollars or that the vessel may
78 be sold after ninety days, pursuant to the provisions of subsection (f) of
79 this section.

80 (f) Ninety days or more after written notice has been given pursuant
81 to subsection (e) of this section, the Commissioner of Transportation, a
82 duly authorized harbor master or a duly authorized representative of a
83 municipality may sell a derelict vessel at public auction in accordance
84 with the provisions of this section. The commissioner, harbor master or
85 authorized agent of a municipality shall apply the proceeds of such
86 sale toward the payment of its charges, any storage charges and the
87 payment of any debt or obligation incurred by the commissioner,
88 harbor master or agent who placed the vessel in storage. Such sale
89 shall be advertised twice in a newspaper published or having a
90 circulation in the town where such vessel is stored or is located,
91 commencing at least five days before such sale; and, if the last place of
92 abode of the owner, agent or operator of such vessel is known to or
93 ascertained by the commissioner, harbor master or agent by the
94 exercise of reasonable diligence, notice of the time and place of sale
95 shall be given to such owner, agent or operator by sending such notice
96 to the owner, agent or operator, certified mail, return receipt
97 requested, at such last place of abode at least five days before the day
98 of the sale. The proceeds of such sale, after deducting any amount due
99 for removal and storage charges and all expenses connected with such
100 sale, shall be paid to the owner, agent or operator of such vessel or the
101 owner, agent or operator's legal representatives, if claimed by the
102 owner, agent or operator or the owner, agent or operator's legal
103 representative at any time within one year from the date of such sale. If
104 such balance is not claimed within said period, it shall escheat to the
105 municipality from which the vessel was removed. If the expenses
106 incurred by the commissioner, harbor master or agent for such
107 removal and storage and sale of such vessel and any fines exceed the
108 proceeds of such sale, the owner, agent or operator of the vessel shall
109 be liable for such excess expenses.

110 [(b)] (g) The Commissioner of Transportation may require the
111 owner, agent or operator to furnish a performance bond in an amount
112 sufficient to cover the estimated costs of removal as determined by the
113 commissioner.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	15-3a
Sec. 2	<i>from passage</i>	15-11a

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Department of Transportation	TF - See Below	See Below	See Below

Note: TF=Transportation Fund

Municipal Impact:

Municipalities	Effect	FY 07 \$	FY 08 \$
Various Municipalities	Revenue Gain	Potential Minimal	Potential Minimal

Explanation

There is a potential revenue gain anticipated to be minimal, less than \$100,000, annually to municipalities from escheated sales proceeds of 'derelict vessels'.

The Department of Transportation (DOT) will be able to accommodate any additional administrative functions resulting from passage of this bill within their anticipated budgetary resources.

House 'A' eliminates the underlying bill and the cost associated to the Department of Environmental Protection and adds the provisions concerning derelict vessels resulting in a potential municipal revenue gain and a workload increase to the DOT.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**HB 5658 (as amended by House "A")******AN ACT CONCERNING THE REMOVAL OF ABANDONED SUNKEN VESSELS.*****SUMMARY:**

Currently, the owner, agent, or operator of a vessel, scow, lighter, or similar floating structure who causes or allows it to be broken or altered so that it will not keep afloat, or grounds or leaves any part of it in a river or harbor is subject to a fine of up to \$500, up to six months imprisonment, or both. The transportation commissioner may (1) cause the vessel or structure to be removed at the owner's, agent's, or operator's expense and recover removal costs, and legal and court costs from the owner by court action; and (2) require the owner, agent, or operator to furnish a performance bond sufficient to cover the amount the commissioner estimates it will cost to remove it.

The bill eliminates the criminal penalty for causing or permitting such a vessel to be broken or altered so that it cannot remain afloat or grounding or leaving any part of it in a river or harbor. Instead, it authorizes a duly authorized harbormaster to determine that a vessel is a "derelict vessel." Once the harbormaster makes this declaration, he, the transportation commissioner, or a duly authorized representative of a municipality may cause the derelict vessel to be removed at the expense of the owner, agent, or operator. The bill makes the last owner of record responsible for the derelict vessel.

The bill establishes procedures for the official to take the derelict vessel into custody after 24 hours and move it to a place of storage. It

also allows the official who caused its removal to sell it after a specific period of time has passed. The procedures the bill establishes are similar to some of the procedures in the law governing towing of apparently abandoned or unregistered motor vehicles from public highways, but do not include a provision for a hearing to contest the validity of the seizure or the sale (see COMMENT).

*House Amendment "A" replaces the original bill (File 361) which would have transferred certain of the powers of the transportation commissioner regarding these sunken or abandoned vessels or other floating structures to the environmental protection commissioner with the provisions summarized above.

EFFECTIVE DATE: Upon passage

DERELICT VESSEL

The bill defines a "derelict vessel" as any vessel, scow, lighter, or similar floating structure or part thereof, whether or not moored, anchored, or made fast to shore, that is broken or altered to such an extent that it will not keep afloat with ordinary care. Under the bill, a vessel could meet this definition whether or not the owner caused or permitted it to be in this condition.

HARBORMASTER AUTHORITY TO FIND A VESSEL TO BE A DERELICT

The bill gives a "duly authorized" harbormaster the authority to declare a vessel to be a derelict. Thereafter, the harbormaster, DOT commissioner, or a "duly authorized" representative of a municipality may cause it to be removed and the costs, including legal and court fees, may be recovered from the vessel's owner, agent or operator through court action.

NOTICE

Before removing a derelict vessel, the official must make a reasonable attempt to notify its owner, agent, or operator and must allow him to make arrangements to remove it. The notification must

inform him that, if not removed within 24 hours, the vessel will be removed, taken into custody, and stored at his expense.

The bill requires the official intending to take the vessel into custody to place a readily visible notification sticker on it. The sticker must show (1) the date and time it was put on the vessel, (2) a statement that if not removed within 24 hours it will be removed and stored at the owner's expense, (3) the location and telephone number where more information is available, and (4) the identity of the official who placed the sticker on the vessel.

Once the derelict vessel has been removed, the official who removed it must give written notice by certified mail with return receipt to its owner, agent, or operator if this is known. The notice must state (1) that the vessel has been removed, taken into custody and stored; (2) the location from which it was removed; and (3) that it may be disposed of after 15 days if a certified marine surveyor determines that its market value is \$2,000 or less or sold after 90 days.

SALE OF DERELICT VESSEL AT PUBLIC AUCTION

Once 90 days have passed since the written notice required by the bill has been made, the official who took it into custody may sell it under the bill at a public auction. The seizing official must apply the sale proceeds toward payment of its charges, any storage fees, and the payment of any debt or obligation incurred by the official who took the derelict vessel into custody.

The sale must be advertised twice in a newspaper published or having circulation in the town where the vessel is stored or located. The legal advertisement must appear at least five days before the sale. If the seizing official knows or finds out through reasonable diligence the last place of abode of the owner, agent, or operator, he must give written notice by certified mail with return receipt at such abode at least five days before the day of sale.

The sale proceeds, after deduction of amounts due for removal,

storage, and expenses, must be paid to the derelict vessel's owner, agent, operator, or his legal representative, if claimed at any time up to one year from the sale. Any unclaimed balance after one year must escheat to the municipality from which the vessel was removed. The derelict vessel's owner, agent, or operator is liable for any charges or other expenses that exceed the sale proceeds.

BACKGROUND

Harbor Masters

By law, harbor masters are appointed by the governor. The governor must appoint a harbor master, and may appoint a deputy harbor master, for the harbors of Branford, Bridgeport, New Haven, New London, Norwalk, Norwich, Stamford, and Stonington. The governor may appoint a suitable number of harbor masters or deputy harbor masters in any other town that has navigable waters within its limits. Harbor masters are subject to the direction and control of the transportation commissioner and are responsible to him for the safe and efficient operation of harbors under their jurisdiction.

COMMENT

Potential Constitutional Issue Regarding Due Process

The bill's provisions are substantially similar to those that have been adopted in the law authorizing state and local police and motor vehicle inspectors to take into custody motor vehicles apparently abandoned, unregistered, or deemed to be a menace to traffic (CGS § 14-150). The notice sticker, 24-hour waiting period, owner notification, and disposal provisions are all similar to those in the towing law. However, the towing law also has provisions giving the vehicle owner an opportunity to contest the seizure of his vehicle before a specified local official, who may not be a member of state or local police department (the agency that seized the vehicle). Such hearing may result in the owner having the vehicle returned to him and a finding that he is not liable for any charges or expenses incurred.

The hearing provision of the towing statute was adopted following

a determination by the federal court that the law deprived affected vehicle owners of due process in that it did not grant them the right to a hearing with respect to the legitimacy of the seizure and sale of a vehicle either before or after their occurrence. The court found that this violated the Fourteenth Amendment to the U.S. Constitution (*Tedeschi v. Blackwood*, 410 F. Supp. 34, D.C. Conn. (1976))

COMMITTEE ACTION

Transportation Committee

Joint Favorable Change of Reference

Yea 30 Nay 0 (03/13/2006)

Environment Committee

Joint Favorable

Yea 27 Nay 0 (03/20/2006)

Government Administration and Elections Committee

Joint Favorable

Yea 19 Nay 0 (04/11/2006)

Appropriations Committee

Joint Favorable

Yea 48 Nay 0 (04/18/2006)