

## **ABANDONED VESSELS, ORVS AND SNOWMOBILES: CREATE REDEMPTION AND DISPOSAL PROCESSES**

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### **House Bill 5563**

**Sponsor: Rep. Andrea LaFontaine**

**Committee: Natural Resources**

**Complete to 9-16-14**

### **A SUMMARY OF HOUSE BILL 5563 AS INTRODUCED 5-8-14**

House Bill 5563 would amend the Natural Resources and Environmental Protection Act to establish a method for determining the owner of an abandoned watercraft, snowmobile, or ORV, and creating penalties and fees relating to that process.

The bill would add several new sections which would prohibit a person from abandoning a vessel, ORV, or snowmobile, respectively, in this state. The processes related to determining ownership and providing notice prior to the sale of abandoned vessels, ORVs, and snowmobiles would be the same, and a civil fine of \$50 would be issued to those who abandoned a vessel, snowmobile, or ORV.

The bill would establish the last titled owner or last registered owner of an abandoned vessel, ORV, or watercraft as the owner unless that individual can prove ownership has been transferred by providing either a photocopy of the reassigned title or reassigned registration or a document that includes the transferee's name, address, driver's license number, signature, date of the transfer, and, if applicable, sale price as a record of the transaction. A civil fine of \$50 would be levied against a person who violates these requirements and who fails to redeem a vessel before its disposition. Under current law, a vessel's owner must notify the secretary of state within 15 days if that vessel is sold or destroyed. This provision would remain unchanged.

**[The following provisions that reference abandoned vessels also apply to abandoned snowmobiles and ORVs, except as otherwise noted.** The bill itself is drafted in this manner with numerous provisions referring to vessels and then brief indications that most of the same provisions apply to ORVs and snowmobiles. See Section 81151 on Page 25 for ORVs and Section 82161 on Page 26 for snowmobiles.]

#### **Definition of abandoned vessel**

An abandoned vessel would be defined as any of the following:

- A vessel that is on private property without the consent of the property owner.
- A vessel parked on a state trunk line highway that is not under the immediate custody of the owner or owner's agent.
- A vessel that is on public property for more than 48 hours without the permission of the governmental unit with custody of that property.

### **Removal process for abandoned vessel**

If the vessel was abandoned on either a state highway or public property, then the police agency having jurisdiction over that area, or that agency's designee, would determine whether the vessel, ORV, or watercraft in question has been reported stolen. If it was not reported stolen, then that agency or agency's designee may have a towing agency take it into custody.

A private property owner may have an unauthorized vessel removed from his or her property after having posted notice on the property for a minimum of 24 hours of the intention to remove the vessel. The vessel may be removed immediately if it poses a threat to safety, either on ground or in the water, is thought to be stolen or must be seized to preserve evidence of a crime, hinders the ability of the property owner to move another vehicle or vessel, or is interfering with the use of a clearly-identified handicap parking space or other handicap-accessible accommodations.

To remove the vessel, the property owner would contact a local towing company, which is defined as a company located within 15 miles from the border of the local unit of government where the property is located. Before removing the vessel, the contacted towing agency must provide reasonable notice by telephone or other method to the police agency having jurisdiction over the area where the vessel is located that the vessel is being removed in order for the police agency to check if the vessel was reported stolen. Once in police custody, the agency would then be required to run a second check on whether the vessel was reported stolen.

Within 24 hours of the vessel being taken into custody, the vessel must be entered in the law enforcement information network as abandoned, along with the following information:

- The year, make, and vessel ID number, if available.
- The address or approximate location from where the vessel was taken into custody.
- The date the vessel was taken into custody.
- The name and address of the police agency.
- The name and business address of the custodian of the vessel.
- The name of the court that has jurisdiction over the case.

The secretary of state, within seven days of receiving notice that a vessel has been taken into custody as abandoned, would be required to send to the last titled owner and secured party, by first-class mail or personal service, notice that the vessel is considered abandoned. If there is no titled owner, then notice shall be sent to the last registered owner by the same means. The notice shall include all of the information entered into the law enforcement information network as well as the following:

- The procedure to contest that the vessel is considered abandoned or the reasonableness of the towing and daily storage fees.

- A form petition that the owner may file in person or by mail with the court having jurisdiction, which also would be specified in the notice, that requests a hearing on the grounds for taking custody of the vessel.
- A warning that if the vessel is not redeemed or a hearing requested within 20 days, the vessel may be sold and all rights of the owner and the secured party to the vessel or to the proceeds of the sale terminated.

The information sent to the last titled owner or last registered owner would also be posted on a secretary of state-maintained website for use by the public in locating vessels taken into custody as abandoned. Information on the website would be maintained by the secretary of state for one year or until the vessel is disposed of, whichever occurs first.

### **Redemption and appeals process**

Once the owner receives notice that his or her vessel was taken into custody as abandoned, they would have 20 days to request a hearing to contest its status as abandoned or the reasonableness of the towing and daily storage fee, unless the fees for daily storage fees have been established by contract with the local governmental unit or police agency. If a hearing is requested, the owner may redeem a vessel by posting a towing and storage bond with, or by paying a fee to, the court. The bond or fee is not to exceed \$40 plus the accrued towing and storage fees. The storage fees that may be collected would be the lesser of the following:

- The daily storage rate established by contract or agreement with the law enforcement agency or unit of government that authorized the towing and storage of the vessel.
- The daily storage rate charged by the storage facility.
- \$1,000.

[These limits do not apply to a commercial vessel or a vessel that is owned or leased by an entity other than an individual.]

The owner of an abandoned vessel who does not request a hearing would be able to redeem the vessel by paying the same fee described above to the custodian of the vessel. The custodian would then be required to transfer \$25 of the \$40 fee to the secretary of state within 30 days in a manner prescribed by the secretary of state. The money would then be deposited into a new fund that the bill creates within the state treasury, which will be called the Abandoned Vessel, ORV, and Snowmobile Fund.

Depending on where the property from which the vessel is removed is located, either a district or municipal court would have jurisdictions over hearings regarding whether a police agency, towing agency or custodian, or private property owner has acted properly in reporting or processing an abandoned vessel or abandoned scrap vessel.

If the owner of the vessel does request a hearing or redeem the vessel within the 20-day window, the secured party would have the option of redeeming the vehicle by paying \$40 plus the least of the three amounts listed above to the custodian of the vessel. The

custodian would then be required to transfer \$25 of the \$40 fee to the secretary of state within 30 days in a manner prescribed by the secretary of state. The money would be deposited into the Abandoned Vessel, ORV, and Snowmobile Fund, and used to defray costs related to the removal and disposal of abandoned vessels. If the vessel's owner does not pay the accrued towing and storage fees, then the towing and storage bond posted with the court would be used to pay the towing and storage fees.

If the vessel's owner files a petition requesting a hearing regarding whether a police agency, towing agency or custodian, or private property owner acted in accordance with the procedures established by this bill, the court would be required to do both of the following:

- Schedule a hearing within 30 days
- Notify the owner, towing agency or custodian, police agency, and, if removed from private property, the property owner, of the time and place of the hearing.

At the hearing, the towing agency or custodian, police agency, and, if removed from private property, the property owner, would have the burden of showing by a preponderance of the evidence, that they acted in accordance with the established procedures. After the hearing, the court would make a decision that includes one or more of the following:

- A finding that the police agency complied with the procedures established for the processing of an abandoned vessel or a vessel removed from private property after 24 hours posted notice, and an order providing a period of 20 days after the decision for the owner to redeem the vessel. If the owner does not redeem the vessel within 20 days, the police agency shall dispose of the vessel in accordance with the procedures established by the bill. Within 30 days after the court's decision, the court would forward \$25 of the collected fee to the secretary of state in a manner prescribed by the secretary of state. The towing and storage fees and \$15 of the collected fee collected would be forwarded to the towing agency.
- A finding that the police agency did not comply with the procedures established for the processing of an abandoned vessel or a vessel removed from private property after 24 hours of posted notice, directing all of the following:
  - That the vessel immediately be released to the owner.
  - That the police agency is responsible for the accrued towing and storage charges.
  - That any fee or bond posted by the owner be returned.
- A finding that the towing fees and daily storage fees were reasonable.
- A finding that the towing fees and daily storage fees were unreasonable and directing the towing agency or custodian of the vessel to provide the last titled owner or, if there is no titled owner, the last registered owner of the vessel with an appropriate reduction or refund.

- A finding that the owner of the real property complied when removing a vessel immediately, if applicable.
- A finding that the owner of the real property improperly removed a vessel from property immediately, if applicable, and an order requiring the owner of the real property to reimburse the last titled owner of the vessel for the accrued towing and storage charges.
- A finding that the towing agency did not comply with the procedures established for the proper removal and reporting of a removed vessel removed and an order directing all of the following:
  - That the vessel immediately be released to the owner.
  - That the towing agency is responsible for the accrued towing and storage charges.
  - That any fee or bond posted by the owner be returned.
- A finding that the towing agency did comply with the procedures established for the proper removal and reporting of a removed vessel.

#### **Disposal of abandoned vessel**

Not less than 20 days following either a determination at a hearing requested by the vessel's owner or date a notice was sent to an owner who did not request a hearing, the police agency, if the vessel was found on public property, or the custodian of the vessel, if found on private property, would be required to offer the vessel for public sale.

A public sale for an abandoned vessel and its contents would have to meet the following requirements:

- Be under the control of the police agency or the custodian of the vessel. A police agency may designate the custodian of the vessel or a third party to conduct the auction.
- Be open to the public and consist of open auction bidding or bidding by sealed bids. If sealed bids are received, the police agency or the agency's designee or, if applicable, the custodian of the vessel shall provide the person submitting a bid with a receipt for the bid.
- Except as otherwise provided, be held not less than 5 days after public notice of the sale has been published. The public notice shall be published at least once in a newspaper having a general circulation within the county in which the vessel was abandoned or on a publicly accessible website maintained by the secretary of state. The public notice shall give a description of the vessel for sale and shall state the time, date, and location of the sale.

The money received from the public sale of the vessel shall be applied in the following order of priority:

- Accrued towing and storage charges. If the money received from the public sale does not satisfy the accrued towing and storage charges, the towing company may collect the balance of those unpaid fees from the last titled owner or, if there is no titled owner, the last registered owner.
- Expenses incurred by the police agency or the custodian of the vessel, for disposition.
- Payment of the \$40 in fees to the custodian of the vessel.
- The Department of Treasury's unclaimed property division to be disbursed as follows:
  - To the secured party, if any, in the amount of the debt outstanding on the vessel.
  - Remainder to the owner. A reasonable attempt shall be made to mail the remainder to the last titled owner or, if there is no titled owner, the last registered owner. If delivery of the remainder cannot be accomplished, the remainder shall become the property of the local unit of government whose police agency entered the vessel in the law enforcement information network.

If there are no bidders on the vessel, the police agency or the custodian of the vessel may do one of the following:

- Turn the vessel over to the towing firm or the custodian of the vessel to satisfy charges against the vessel by completing the release form. However, if the value of the vessel does not satisfy the towing fees and accrued daily storage fees, the custodian of the vessel may collect the balance of those unpaid fees from the last titled owner or, if there is no titled owner, the last registered owner.
- Obtain title to the vessel for the police agency or the unit of government the police agency represents, by doing both of the following:
  - Paying the towing and storage charges.
  - Applying for title to the vessel (does not apply to snowmobiles).
- Holding another public sale.

Upon disposition of the vessel, the police agency or towing agency or custodian shall provide the secretary of state and the police agency, if that police agency did not conduct the sale, with the vessel's disposition and the name of the agency that disposed of it, and the police agency shall cancel the entry in the law enforcement information network, if applicable.

If by 25 days after the date of notice required under Section 80130f the police agency has not provided a copy of the bill of sale for the abandoned vessel to the towing agency or custodian or police agency's designee, the towing agency or custodian or police agency designee may obtain an original of the bill of sale by submitting an application to the secretary of state in a form as determined by the secretary of state.

### **Abandoned scrap vessels, ORVs, and snowmobiles**

Section 252B of the Michigan Vehicle Code (PA 300 of 1949) sets the criteria for determining an abandoned scrap vehicle and how such a vehicle should be documented. The bill would mirror that language.

A registered scrap vessel is a vessel that meets all of the following requirements:

- Seven or more years old.
- Apparently inoperable or is damaged to the extent that the cost of repairing the vessel to make it operational and safe would exceed its fair market value.
- Currently registered or titled in Michigan or displays a current year registration or registration decal from another state.

An unregistered abandoned scrap vessel is a vessel that meets all of the following requirements:

- Apparently inoperable or is damaged to the extent that the cost of repairing the vessel to make it operational and safe would exceed its fair market value.
- Not currently registered or titled in Michigan or displays a current year registration or registration decal from another state.

### **Documentation process for scrap vessel**

When a vessel has been verified as not having been reported stolen and is taken into custody, the police agency would be required to do all of the following:

- Take two photographs of the vessel
- Make a report to substantiate the vessel as an unregistered abandoned scrap vessel with the following information:
  - The year, make, and vessel ID number, if available, and a brief description of the vessel (for registered abandoned scrap vessels, the brief description is not required).
  - The date of abandonment.
  - The location of abandonment.
  - A detailed listing of the damage or the missing equipment.
  - The reporting officer's name and title.
  - The location where the vessel is being held.
- Within 24 hours of the vessel being taken into custody, enter the vessel in the law enforcement information network as an abandoned vessel.
- For registered abandoned vessels, within seven days of vessel being taken into custody, the secretary of state must send a notice to the last titled or registered owner with the same information entered into the law enforcement network, as detailed above.

Once those two requirements have been met, the secretary of state will provide the police agency with a release form that includes a certification that the police agency has complied with those requirements. Within 24 hours of determining that the vessel was not

stolen, not counting Saturday, Sunday, or legal holidays, the agency or agency's designee would fill out the release form and certification before releasing the vessel to the towing service.

The towing service is to then take the scrap vessel to a scrap metal processor or landfill and complete the certificate of scrapping found on the other side of the release form given to towing service by the police agency [This requirement does not apply to snowmobiles. The release form may be used as evidence of ownership to apply for a snowmobile registration.] Once that is done, the processor or landfill operator would then transfer the release/certificate form to the secretary of state. The bill directs the secretary of state to maintain records relating to an abandoned scrap vessel for not less than two years. The police agency also would be required to retain the photographs for a minimum of two years.

**FISCAL IMPACT:**

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.