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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of )  
)  
**Michael Schmautz** )  
) No. S-16-005  
From an Interpretation by the Director, Seattle )  
Department of Construction and Inspection. ) Declaration of Erin E. Ferguson in Support of  
) City's Reply to Appellant's Opposition to the  
) City's Motion for Summary Judgment  
)  
\_\_\_\_\_ )


I, ERIN E. FERGUSON, declare under penalty of perjury under the laws of the State of Washington that:

1. This declaration is based on my personal knowledge of the facts described below.
2. I am over eighteen years of age and am otherwise competent to testify regarding these matters.
3. I am employed as an Assistant City Attorney for the City of Seattle.
4. A true and correct copy of Senate Bill Report for SB 6450, February 2014, is attached as EXHIBIT A.
5. A true and correct copy of House Bill Report for ESSB 6450, March 2015, is attached as EXHIBIT B.
6. A copy of two illustrative photographs are attached as EXHIBIT C. Photograph 1 is a photograph of Mr. Schmautz's vessel, which is one of the photographs in Exhibit B

1 attached to his declaration. Photograph 2 is a true and correct copy of a photograph of  
2 FOWR No. 834, verified by the City of Seattle.

3 DATED this 15th day of December, 2016.

4  
5  
6 By:

  
Erin E. Ferguson  
Assistant City Attorney

7 via email  
8 authorization  
9 on 12/15/16.

# EXHIBIT A

# SENATE BILL REPORT

## SB 6450

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As Reported by Senate Committee On:  
Natural Resources & Parks, February 4, 2014

**Title:** An act relating to on-water dwellings.

**Brief Description:** Concerning on-water dwellings.

**Sponsors:** Senators Pedersen, Kohl-Welles, Pearson, Liias, Erickson and Kline.

**Brief History:**

**Committee Activity:** Natural Resources & Parks: 1/30/14, 2/04/14 [DPS].

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### SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

**Majority Report:** That Substitute Senate Bill No. 6450 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pearson, Chair; Liias, Ranking Member; Dandel, Hargrove, Hewitt, Kline and Parlette.

**Staff:** Curt Gavigan (786-7437)

**Background:** The Shoreline Management Act (SMA) requires the development of local shoreline master programs, which must be consistent with guidelines adopted by the Department of Ecology. Each local government must establish a program for the administration and enforcement of a shoreline permit system.

The SMA provides that all permitted or legally established floating homes as of January 1, 2011, must be considered as a conforming preferred use under local shoreline regulations. This means that local regulations may only impose reasonable conditions and mitigation that will not effectively preclude actions such as maintenance, repair, replacement, and remodeling of floating homes.

**Summary of Bill (Recommended Substitute):** A floating on-water residence that was legally established before July 1, 2014, must be accommodated through reasonable local shoreline regulations, permit conditions, or mitigation. The local regulations may not effectively preclude actions such as maintenance, repair, replacement, and remodeling of floating on-water residences.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The term floating on-water residence means any floating structure, other than a floating home, that:

- is designed or used primarily as a residence on the water and has detachable utilities; and
- whose owner or primary occupant has held a lease or sublease to use space in a marina as a primary residence since before July 1, 2014.

An intent section is included.

**EFFECT OF CHANGES MADE BY NATURAL RESOURCES & PARKS COMMITTEE (Recommended Substitute):**

- Provides conforming use status and the associated protections in the underlying bill to any floating structure other than a floating home (1) that is designed or used primarily as a residence on the water and has detachable utilities; and (2) whose owner or primary occupant has held a lease or sublease in a marina as their primary residence since prior to July 1, 2014.
- Specifies that the bill does not affect other permits, authorizations, or authorities.
- Modifies the intent section.
- Makes organizational changes.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: Protection was established for floating homes in the area in a previous bill. This bill would see that protection extended to those who live within structures classified as vessels. This bill would protect people who may be otherwise unable to afford housing in Seattle. Houseboat owners protect the environment and are a boon to their community. These residences do not impede the function of harbors. This bill would not upset the delicate balance of laws that exist currently.

CON: There is concern that this bill would disrupt the SMA, as well as concern that this bill could enable floating housing developments or other residential buildings which do have environmental impacts.

OTHER: There is support for the intent of the bill, but there is some concern that this bill would not affect recreational liveaboards that move from place to place.

**Persons Testifying:** PRO: Senator Pederson, prime sponsor; Ginny Stern, Keith Rosema, Maria Warren, Heather Dean, Olympia Liveaboard Assn.; Matthew Pontious, Langdon Miller, Natalie Saaris, John Geisheker, Susan Welch, Lake Union Liveaboard Assn.; Allen

Miller, Martin Marina; Todd Filer, Kent Perry, John Chaney, Barbara Engram, Michael Currie, citizens.

CON: Naki Stevens, Sound Action; Susan Neff, citizen.

OTHER: Doug Levy, Recreational Boating Assn. of WA; Tom Clingman, Dept. of Ecology.

# EXHIBIT B

# HOUSE BILL REPORT

## ESSB 6450

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### As Passed House:

March 5, 2014

**Title:** An act relating to on-water dwellings.

**Brief Description:** Concerning on-water dwellings.

**Sponsors:** Senate Committee on Natural Resources & Parks (originally sponsored by Senators Pedersen, Kohl-Welles, Pearson, Liias, Ericksen and Kline).

### Brief History:

#### Committee Activity:

Environment: 2/21/14, 2/26/14 [DP].

#### Floor Activity:

Passed House: 3/5/14, 88-10.

### Brief Summary of Engrossed Substitute Bill

- Requires certain floating on-water residencies permitted or legally established prior to July 1, 2014, to be classified as a conforming use in a local government's shoreline regulations.

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## HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** Do pass. Signed by 11 members: Representatives Fitzgibbon, Chair; Senn, Vice Chair; Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Farrell, Fey, Harris, Kagi, Morris, Nealey and Tharinger.

**Minority Report:** Do not pass. Signed by 1 member: Representative Overstreet.

**Staff:** Jason Callahan (786-7117).

### Background:

The Shoreline Management Act (SMA) governs uses of state shorelines. The SMA enunciates state policy to provide for shoreline management by planning for and fostering "all reasonable and appropriate uses." The SMA prioritizes public shoreline access and

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enjoyment and creates preference criteria in a prioritized order that must be used by state and local governments in regulating shoreline uses. Preferred shoreline uses, as specified in the SMA, are those which are consistent with the control of pollution and the prevention of damage to the natural environment, and those which are unique to or dependent upon use of the state's shoreline.

The SMA involves a cooperative regulatory approach between local governments and the state. At the local level, the SMA regulations are developed in local shoreline master programs (master programs). All counties and cities with shorelines of the state are required to adopt and enforce master programs that regulate land use activities within their jurisdictions. Master programs must be consistent with guidelines adopted by the Department of Ecology (DOE), and the programs and segments of or amendments to the programs become effective when approved by the DOE.

The SMA provides that all fully permitted and legally established floating homes must be considered as an allowed use under any local shoreline regulations if the home was lawfully in place prior to the start of 2011. This means that any single family dwelling unit that is constructed on a float, anchored, or otherwise secured in water is not subject to any local conditions or regulations on the home's use. This includes local regulations that preclude maintenance, repair, replacement, and remodeling of floating homes, and applies to floating homes even if they are capable of being towed.

**Summary of Bill:**

Floating on-water residencies must be classified as a conforming use in a local government's shoreline regulations if they are legally established prior to July 1, 2014. The term "floating on-water residencies" is defined to capture any floating structure, other than a floating home, that is designed or used primarily as a residence, has detachable utilities, and is the subject of a lease or sublease at a marina, or whose owner has an ownership interest in a marina, as of July 1, 2014.

Floating on-water residencies are not subject to any unreasonable local conditions or regulations on the home's use, including regulations that preclude maintenance, repair, replacement, and remodeling of the floating on-water residencies or their moorages.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Houseboats are significant financial investments by their owners that were built to meet all existing regulations and environmental protections. Their owners followed all of the rules and did the right thing. There is no evidence that these structures are a risk to the environment or that any of the proposed arbitrary regulations related to the structures will

improve the environment. If local regulations prohibit on-water living, then many people will find they are unable to live in the structure for which they are required to pay for a mortgage.

Many historic societal prejudices have gone away or been minimized as the public has become educated and the principle of equal treatment for all has been used as the foundation for many public policies. It is offensive when the principle of equal treatment is not applied to all liveaboard vessels and some are treated as acceptable while others are viewed as illegal shanties.

The residences included in this bill were inadvertently left out of a bill passed in 2011 that addressed the legitimacy of floating homes. Now new legislation is needed to assure that they are included in changes under the SMA because some local jurisdictions interpret the absence of these residences from the 2011 legislation to be a statement of legislative intent that they should be treated differently. There should be trepidation when a statewide policy is adopted to address a local issue; however, in this case, the unintended consequences seem minimal.

The solutions in the bill solve problems for some of the state, but not all of it. In some areas, on-water living is threatened by the administrative decisions of the Department of Natural Resources. The bill should be amended to correct this issue as well.

(In support with amendment(s)) There should be a way for recreational liveaboard vessels to opt out of the scope of the bill and not necessarily be lumped together with houseboats for the purpose of definitions and regulations.

(Opposed) People who reside on liveaboard vessels have consistently misrepresented the impacts of those vessels. The owners of the vessels knew about the local standards for the vessels and moved into the marinas anyway. These owners should not be given special treatment for having done the wrong thing and for having knowingly violated local ordinances. This is a land grab by a community that is poised to outcompete recreational vessels for the finite number of moorage spaces currently available.

Houseboats and liveaboard vessels are not the same as floating homes and should not be given the same treatment. Floating homes are subject to local building and electrical codes and are taxed as real property. Houseboats and liveaboard vessels are not subject to these domicile safety requirements and are taxed at a much lower rate.

**Persons Testifying:** (In support) Senator Pedersen, prime sponsor; Barbara Engram and John Chaney, Lake Union Liveaboard Association; Ginny Stern, Olympia Liveaboard Association; Tom Clingman, Department of Ecology; and Allen Miller, Martin Marina.

(In support with amendment(s)) Doug Levy, Recreational Boating Association of Washington.

(Opposed) Susan Neff, Lake Union Liveaboard Association.

**Persons Signed In To Testify But Not Testifying:** None.

# EXHIBIT C

**Photograph 1: Schmautz Vessel**



**Photograph 2: Floating On Water Residence, Verification No. 834**

