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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: S-4483.1/02

ATTY/TYPIST: ML:mos

BRIEF DESCRIPTION:

2 **ESHB 2376** - S COMM AMD

3 By Committee on Natural Resources, Parks & Shorelines

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 NEW SECTION. **Sec. 1.** The legislature finds that there has been  
8 an increase in the number of derelict and abandoned vessels that are  
9 either grounded or anchored upon publicly or privately owned submerged  
10 lands. These vessels are public nuisances and safety hazards as they  
11 often pose hazards to navigation, detract from the aesthetics of  
12 Washington's waterways, and threaten the environment with the potential  
13 release of hazardous materials. The legislature further finds that the  
14 costs associated with the disposal of derelict and abandoned vessels  
15 are substantial, and that in many cases there is no way to track down  
16 the current vessel owners in order to seek compensation. As a result,  
17 the costs associated with the removal of derelict vessels becomes a  
18 burden on public entities and the taxpaying public.

19 NEW SECTION. **Sec. 2.** The definitions in this section apply  
20 throughout this chapter unless the context clearly requires otherwise.

21 (1) "Abandoned vessel" means the vessel's owner is not known or  
22 cannot be located, or if the vessel's owner is known and located but is  
23 unwilling to take control of the vessel, and the vessel has been left,  
24 moored, or anchored in the same area without the express consent, or  
25 contrary to the rules, of the owner, manager, or lessee of the aquatic  
26 lands below or on which the vessel is located for either a period of  
27 more than thirty consecutive days or for more than a total of ninety  
28 days in any three hundred sixty-five day period. For the purposes of  
29 this subsection (1) only, "in the same area" means within a radius of  
30 five miles of any location where the vessel was previously moored or  
31 anchored on aquatic lands.

32 (2) "Aquatic lands" means all tidelands, shorelands, harbor areas,  
33 and the beds of navigable waters, including lands owned by the state  
34 and lands owned by other public or private entities.

1 (3) "Authorized public entity" includes any of the following: The  
2 department of natural resources; the department of fish and wildlife;  
3 the parks and recreation commission; a metropolitan park district; a  
4 port district; and any city, town, or county with ownership,  
5 management, or jurisdiction over the aquatic lands where an abandoned  
6 or derelict vessel is located.

7 (4) "Department" means the department of natural resources.

8 (5) "Derelict vessel" means the vessel's owner is known and can be  
9 located, and exerts control of a vessel that:

10 (a) Has been moored, anchored, or otherwise left in the waters of  
11 the state or on public property contrary to RCW 79.01.760 or rules  
12 adopted by an authorized public entity;

13 (b) Has been left on private property without authorization of the  
14 owner; or

15 (c) Has been left for a period of seven consecutive days, and:

16 (i) Is sunk or in danger of sinking;

17 (ii) Is obstructing a waterway; or

18 (iii) Is endangering life or property.

19 (6) "Owner" means any natural person, firm, partnership,  
20 corporation, association, government entity, or organization that has  
21 a lawful right to possession of a vessel by purchase, exchange, gift,  
22 lease, inheritance, or legal action whether or not the vessel is  
23 subject to a security interest.

24 (7) "Vessel" has the same meaning as defined in RCW 53.08.310.

25 NEW SECTION. **Sec. 3.** This chapter is not intended to limit or  
26 constrain the ability and authority of the authorized public entities  
27 to enact and enforce ordinances or other regulations relating to  
28 derelict and abandoned vessels, or to take any actions authorized by  
29 federal or state law in responding to derelict or abandoned vessels.  
30 This chapter is also not intended to be the sole remedy available to  
31 authorized public entities against the owners of derelict and abandoned  
32 vessels.

33 NEW SECTION. **Sec. 4.** (1) An authorized public entity has the  
34 authority, subject to the processes and limitations of this chapter, to  
35 store, strip, use, auction, sell, salvage, scrap, or dispose of an  
36 abandoned or derelict vessel found on or above aquatic lands within the  
37 jurisdiction of the authorized public entity. A vessel disposal must

1 be done in an environmentally sound manner and in accordance with all  
2 federal, state, and local laws, including the state solid waste  
3 disposal provisions provided for in chapter 70.95 RCW. Scuttling or  
4 sinking of a vessel is only permissible after obtaining the express  
5 permission of the owner or owners of the aquatic lands below where the  
6 scuttling or sinking would occur, and obtaining all necessary state and  
7 federal permits or licenses.

8 (2) The primary responsibility to remove a derelict or abandoned  
9 vessel belongs to the owner, operator, or lessee of the moorage  
10 facility or the aquatic lands where the vessel is located. If the  
11 authorized public entity with the primary responsibility is unwilling  
12 or unable to exercise the authority granted by this section, it may  
13 request the department to assume the authorized public entity's  
14 authority for a particular vessel. The department may at its  
15 discretion assume the authorized public entity's authority for a  
16 particular vessel after being requested to do so. For vessels not at  
17 a moorage facility, an authorized public entity with jurisdiction over  
18 the aquatic lands where the vessel is located may, at its discretion,  
19 request to assume primary responsibility for that particular vessel  
20 from the owner of the aquatic lands where the vessel is located.

21 (3) The authority granted by this chapter is permissive, and no  
22 authorized public entity has a duty to exercise the authority. No  
23 liability attaches to an authorized public entity that chooses not to  
24 exercise this authority.

25 NEW SECTION. **Sec. 5.** (1) Prior to exercising the authority  
26 granted in section 4 of this act, the authorized public entity must  
27 first obtain custody of the vessel. To do so, the authorized public  
28 entity must:

29 (a) Mail notice of its intent to obtain custody, at least twenty  
30 days prior to taking custody, to the last known address of the previous  
31 owner to register the vessel in any state or with the federal  
32 government and to any lien holders or secured interests on record. A  
33 notice need not be sent to the purported owner or any other person  
34 whose interest in the vessel is not recorded with a state or federal  
35 agency;

36 (b) Post notice of its intent clearly on the vessel for thirty days  
37 and publish its intent at least once, more than ten days but less than

1 twenty days prior to taking custody, in a newspaper of general  
2 circulation for the county in which the vessel is located; and

3 (c) Post notice of its intent on the department's internet web site  
4 on a page specifically designated for such notices. If the authorized  
5 public entity is not the department, the department must facilitate the  
6 internet posting.

7 (2) All notices sent, posted, or published in accordance with this  
8 section must, at a minimum, explain the intent of the authorized public  
9 entity to take custody of the vessel, the rights of the authorized  
10 public entity after taking custody of the vessel as provided in section  
11 4 of this act, the procedures the owner must follow in order to avoid  
12 custody being taken by the authorized public entity, the procedures the  
13 owner must follow in order to reclaim possession after custody is taken  
14 by the authorized public entity, and the financial liabilities that the  
15 owner may incur as provided for in section 7 of this act.

16 (3) If a vessel is in immediate danger of sinking, breaking up, or  
17 blocking navigational channels, and the owner of the vessel cannot be  
18 located or is unwilling to assume responsibility for the vessel, an  
19 authorized public entity may tow, beach, or otherwise take temporary  
20 possession of the vessel. Before taking temporary possession of the  
21 vessel, the authorized public entity must make reasonable attempts to  
22 consult with the department and the United States coast guard to ensure  
23 that other remedies are not available. The basis for taking temporary  
24 possession of the vessel must be set out in writing by the authorized  
25 public entity within seven days of taking action and be submitted to  
26 the owner, if known, as soon thereafter as is reasonable. Immediately  
27 after taking possession of the vessel, the authorized public entity  
28 must initiate the notice provisions in subsection (1) of this section.  
29 The authorized public entity must complete the notice requirements of  
30 subsection (1) of this section before using or disposing of the vessel  
31 as authorized in section 6 of this act.

32 NEW SECTION. **Sec. 6.** (1) After taking custody of a vessel, the  
33 authorized public entity may use or dispose of the vessel in any  
34 appropriate and environmentally sound manner without further notice to  
35 any owners, but must give preference to uses that derive some monetary  
36 benefit from the vessel, either in whole or in scrap. If no value can  
37 be derived from the vessel, the authorized public entity must give  
38 preference to the least costly, environmentally sound, reasonable

1 disposal option. Any disposal operations must be consistent with the  
2 state solid waste disposal provisions provided for in chapter 70.95  
3 RCW.

4 (2) If the authorized public entity chooses to offer the vessel at  
5 a public auction, either a minimum bid may be set or a letter of credit  
6 may be required, or both, to discourage future reabandonment of the  
7 vessel.

8 (3) Proceeds derived from the sale of the vessel must first be  
9 applied to any administrative costs that are incurred by the authorized  
10 public entity during the notification procedures set forth in section  
11 5 of this act, removal and disposal costs, and costs associated with  
12 environmental damages directly or indirectly caused by the vessel. If  
13 the proceeds derived from the vessel exceed all administrative costs,  
14 removal and disposal costs, and costs associated with environmental  
15 damages directly or indirectly caused by the vessel, the remaining  
16 moneys must be applied to satisfying any liens registered against the  
17 vessel.

18 (4) Any value derived from a vessel greater than all liens and  
19 costs incurred reverts to the derelict vessel removal account  
20 established in section 11 of this act.

21 NEW SECTION. **Sec. 7.** (1) The owner of an abandoned or derelict  
22 vessel is responsible for reimbursing an authorized public entity for  
23 all reasonable and auditable costs associated with the removal or  
24 disposal of the owner's vessel under this chapter. These costs  
25 include, but are not limited to, costs incurred exercising the  
26 authority granted in section 4 of this act, all administrative costs  
27 incurred by the authorized public entity during the procedure set forth  
28 in section 5 of this act, removal and disposal costs, and costs  
29 associated with environmental damages directly or indirectly caused by  
30 the vessel.

31 (2) Reimbursement for costs may be sought from an owner who is  
32 identified subsequent to the vessel's removal and disposal.

33 (3) If the full amount of all costs due to the authorized public  
34 entity under this chapter is not paid to the authorized public entity  
35 within thirty days after first notifying the responsible parties of the  
36 amounts owed, the authorized public entity or the department may bring  
37 an action in any court of competent jurisdiction to recover the costs,

1 plus reasonable attorneys' fees and costs incurred by the authorized  
2 public entity.

3 NEW SECTION. **Sec. 8.** An authorized public entity may enter into  
4 a contract with a private company or individual to carry out the  
5 authority granted in this chapter.

6 NEW SECTION. **Sec. 9.** The rights granted by this chapter are in  
7 addition to any other legal rights an authorized public entity may have  
8 to obtain title to, remove, recover, sell, or dispose of an abandoned  
9 or derelict vessel, and in no way does this chapter alter those rights,  
10 or affect the priority of other liens on a vessel.

11 NEW SECTION. **Sec. 10.** A person seeking to redeem a vessel that is  
12 in the custody of an authorized public entity may commence a lawsuit to  
13 contest the authorized public entity's decision to take custody of the  
14 vessel or to contest the amount of reimbursement owed. The lawsuit  
15 must be commenced in the superior court of the county in which the  
16 vessel existed when custody was taken by the authorized public entity.  
17 The lawsuit must be commenced within twenty days of the date the  
18 authorized public entity took custody of the vessel under section 5 of  
19 this act, or the right to a hearing is deemed waived and the vessel's  
20 owner is liable for any costs owed the authorized public entity. In  
21 the event of litigation, the prevailing party is entitled to reasonable  
22 attorneys' fees and costs.

23 NEW SECTION. **Sec. 11.** (1) The derelict vessel removal account is  
24 created in the state treasury. All receipts from sections 6 and 7 of  
25 this act and those moneys specified in RCW 88.02.030 and 88.02.050 must  
26 be deposited into the account. Moneys in the account may only be spent  
27 after appropriation. Expenditures from the account shall be used by  
28 the department to reimburse authorized public entities for seventy-five  
29 percent of the total reasonable and auditable administrative, removal,  
30 disposal, and environmental damage costs of abandoned or derelict  
31 vessels when the previous owner is either unknown after a reasonable  
32 search effort or insolvent.

33 (2) If the balance of the account reaches one million dollars as of  
34 March 1st of any year, the department must notify the department of

1 licensing and the collection of any fees associated with this account  
2 must be suspended for the following fiscal year.

3 (3) Priority for use of this account is for the removal of derelict  
4 and abandoned vessels that are in danger of sinking, breaking up, or  
5 blocking navigation channels, or that present environmental risks such  
6 as leaking fuel or other hazardous substances. The department must  
7 develop criteria, in the form of informal guidelines, to prioritize  
8 removal projects associated with this chapter, but may not consider  
9 whether the applicant is a state or local entity when prioritizing.  
10 The guidelines must also include guidance to the authorized public  
11 entities as to what removal activities and associated costs are  
12 reasonable and eligible for reimbursement.

13 (4) The department must keep all authorized public entities  
14 apprized of the balance of the derelict vessel removal account and the  
15 funds available for reimbursement. The guidelines developed by the  
16 department must also be made available to the other authorized public  
17 entities. This subsection (4) must be satisfied by utilizing the least  
18 costly method, including maintaining the information on the  
19 department's internet web site, or any other cost-effective method.

20 (5) An authorized public entity may contribute its twenty-five  
21 percent of costs that are not eligible for reimbursement by using in-  
22 kind services, including the use of existing staff, equipment, and  
23 volunteers.

24 (6) This chapter does not guarantee reimbursement for an authorized  
25 public entity. Authorized public entities seeking certainty in  
26 reimbursement prior to taking action under this chapter may first  
27 notify the department of their proposed action and the estimated total  
28 costs. Upon notification by an authorized public entity, the  
29 department must make the authorized public entity aware of the status  
30 of the fund and the likelihood of reimbursement being available. The  
31 department may offer technical assistance and assure reimbursement for  
32 up to two years following the removal action if an assurance is  
33 appropriate given the balance of the fund and the details of the  
34 proposed action.

35 **Sec. 12.** RCW 88.02.030 and 1998 c 198 s 1 are each amended to read  
36 as follows:

37 Vessel registration is required under this chapter except for the  
38 following:



1 (1) Military or public vessels of the United States, except  
2 recreational-type public vessels;

3 (2) Vessels owned by a state or subdivision thereof, used  
4 principally for governmental purposes and clearly identifiable as such;

5 (3) Vessels either (a) registered or numbered under the laws of a  
6 country other than the United States; or (b) having a valid United  
7 States customs service cruising license issued pursuant to 19 C.F.R.  
8 Sec. 4.94. On or before the sixty-first day of use in the state, any  
9 vessel in the state under this subsection shall obtain an  
10 identification document from the department of licensing, its agents,  
11 or subagents indicating when the vessel first came into the state. At  
12 the time of any issuance of an identification document, a (~~twenty-~~  
13 ~~five~~) thirty dollar identification document fee shall be paid by the  
14 vessel owner to the department of licensing for the cost of providing  
15 the identification document by the department of licensing. Five  
16 dollars from each such transaction must be deposited in the derelict  
17 vessel removal account created in section 11 of this act. Any moneys  
18 remaining from the fee after the payment of costs and the deposit to  
19 the derelict vessel removal account shall be allocated to counties by  
20 the state treasurer for approved boating safety programs under RCW  
21 88.02.045. The department of licensing shall adopt rules to implement  
22 its duties under this subsection, including issuing and displaying the  
23 identification document and collecting the (~~twenty-five~~) thirty  
24 dollar fee;

25 (4) Vessels that have been issued a valid number under federal law  
26 or by an approved issuing authority of the state of principal  
27 operation. However, a vessel that is validly registered in another  
28 state but that is removed to this state for principal use is subject to  
29 registration under this chapter. The issuing authority for this state  
30 shall recognize the validity of the numbers previously issued for a  
31 period of sixty days after arrival in this state;

32 (5) Vessels owned by a nonresident if the vessel is located upon  
33 the waters of this state exclusively for repairs, alteration, or  
34 reconstruction, or any testing related to the repair, alteration, or  
35 reconstruction conducted in this state if an employee of the repair,  
36 alteration, or construction facility is on board the vessel during any  
37 testing(~~(:— PROVIDED, That)~~). However, any vessel owned by a  
38 nonresident is located upon the waters of this state exclusively for  
39 repairs, alteration, reconstruction, or testing for a period longer

1 than sixty days, that the nonresident shall file an affidavit with the  
2 department of revenue verifying the vessel is located upon the waters  
3 of this state for repair, alteration, reconstruction, or testing and  
4 shall continue to file such affidavit every sixty days thereafter,  
5 while the vessel is located upon the waters of this state exclusively  
6 for repairs, alteration, reconstruction, or testing;

7 (6) Vessels equipped with propulsion machinery of less than ten  
8 horsepower that:

9 (a) Are owned by the owner of a vessel for which a valid vessel  
10 number has been issued;

11 (b) Display the number of that numbered vessel followed by the  
12 suffix "1" in the manner prescribed by the department; and

13 (c) Are used as a tender for direct transportation between that  
14 vessel and the shore and for no other purpose;

15 (7) Vessels under sixteen feet in overall length which have no  
16 propulsion machinery of any type or which are not used on waters  
17 subject to the jurisdiction of the United States or on the high seas  
18 beyond the territorial seas for vessels owned in the United States and  
19 are powered by propulsion machinery of ten or less horsepower;

20 (8) Vessels with no propulsion machinery of any type for which the  
21 primary mode of propulsion is human power;

22 (9) Vessels primarily engaged in commerce which have or are  
23 required to have a valid marine document as a vessel of the United  
24 States. Commercial vessels which the department of revenue determines  
25 have the external appearance of vessels which would otherwise be  
26 required to register under this chapter, must display decals issued  
27 annually by the department of revenue that indicate the vessel's exempt  
28 status;

29 (10) Vessels primarily engaged in commerce which are owned by a  
30 resident of a country other than the United States; and

31 (11) On and after January 1, 1998, vessels owned by a nonresident  
32 individual brought into the state for his or her use or enjoyment while  
33 temporarily within the state for not more than six months in any  
34 continuous twelve-month period, unless the vessel is used in conducting  
35 a nontransitory business activity within the state. However, the  
36 vessel must have been issued a valid number under federal law or by an  
37 approved issuing authority of the state of principal operation. On or  
38 before the sixty-first day of use in the state, any vessel temporarily  
39 in the state under this subsection shall obtain an identification

1 document from the department of licensing, its agents, or subagents  
2 indicating when the vessel first came into the state. An  
3 identification document shall be valid for a period of two months. At  
4 the time of any issuance of an identification document, a twenty-five  
5 dollar identification document fee shall be paid by the vessel owner to  
6 the department of licensing for the cost of providing the  
7 identification document by the department of licensing. Any moneys  
8 remaining from the fee after payment of costs shall be allocated to  
9 counties by the state treasurer for approved boating safety programs  
10 under RCW 88.02.045. The department of licensing shall adopt rules to  
11 implement its duties under this subsection, including issuing and  
12 displaying the identification document and collecting the twenty-five  
13 dollar fee.

14 **Sec. 13.** RCW 88.02.050 and 1993 c 244 s 38 are each amended to  
15 read as follows:

16 Application for a vessel registration shall be made to the  
17 department or its authorized agent in the manner and upon forms  
18 prescribed by the department. The application shall state the name and  
19 address of each owner of the vessel and such other information as may  
20 be required by the department, shall be signed by at least one owner,  
21 and shall be accompanied by a vessel registration fee of ten dollars  
22 and fifty cents per year and the excise tax imposed under chapter 82.49  
23 RCW. In addition, two additional dollars must be collected annually  
24 from every vessel registration application. These moneys must be  
25 deposited into the derelict vessel removal account established in  
26 section 11 of this act. If the department of natural resources  
27 indicates that the balance of the derelict vessel removal account  
28 reaches one million dollars as of March 1st of any year, the collection  
29 of the two-dollar fee must be suspended for the following fiscal year.  
30 Any fees required for licensing agents under RCW 46.01.140 shall be in  
31 addition to the ten dollar and fifty cent annual registration fee and  
32 the two-dollar derelict vessel fee.

33 Upon receipt of the application and the registration fee, the  
34 department shall assign a registration number and issue a decal for  
35 each vessel. The registration number and decal shall be issued and  
36 affixed to the vessel in a manner prescribed by the department  
37 consistent with the standard numbering system for vessels set forth in  
38 volume 33, part 174, of the code of federal regulations. A valid decal

1 affixed as prescribed shall indicate compliance with the annual  
2 registration requirements of this chapter.

3 The vessel registrations and decals are valid for a period of one  
4 year, except that the director of licensing may extend or diminish  
5 vessel registration periods, and the decals therefor, for the purpose  
6 of staggered renewal periods. For registration periods of more or less  
7 than one year, the department may collect prorated annual registration  
8 fees and excise taxes based upon the number of months in the  
9 registration period. Vessel registrations are renewable every year in  
10 a manner prescribed by the department upon payment of the vessel  
11 registration fee ((and)), excise tax, and the derelict vessel fee.  
12 Upon renewing a vessel registration, the department shall issue a new  
13 decal to be affixed as prescribed by the department.

14 When the department issues either a notice to renew a vessel  
15 registration or a decal for a new or renewed vessel registration, it  
16 shall also provide information on the location of marine oil recycling  
17 tanks and sewage holding tank pumping stations. This information will  
18 be provided to the department by the state parks and recreation  
19 commission in a form ready for distribution. The form will be  
20 developed and prepared by the state parks and recreation commission  
21 with the cooperation of the department of ecology. The department, the  
22 state parks and recreation commission, and the department of ecology  
23 shall enter into a memorandum of agreement to implement this process.

24 A person acquiring a vessel from a dealer or a vessel already  
25 validly registered under this chapter shall, within fifteen days of the  
26 acquisition or purchase of the vessel, apply to the department or its  
27 authorized agent for transfer of the vessel registration, and the  
28 application shall be accompanied by a transfer fee of one dollar.

29 **Sec. 14.** RCW 88.02.040 and 1989 c 393 s 12 are each amended to  
30 read as follows:

31 The department shall provide for the issuance of vessel  
32 registrations and may appoint agents for collecting fees and issuing  
33 registration numbers and decals. General fees for vessel registrations  
34 collected by the director shall be deposited in the general fund:  
35 PROVIDED, That any amount above one million one hundred thousand  
36 dollars per fiscal year shall be allocated to counties by the state  
37 treasurer for boating safety/education and law enforcement programs and  
38 the fee collected specifically for the removal and disposal of derelict

1 vessels must be deposited in the derelict vessel removal account  
2 created in section 11 of this act. Eligibility for (~~such~~) boating  
3 safety/education and law enforcement program allocations shall be  
4 contingent upon approval of the local boating safety program by the  
5 state parks and recreation commission. Fund allocation shall be based  
6 on the numbers of registered vessels by county of moorage. Each  
7 benefitting county shall be responsible for equitable distribution of  
8 such allocation to other jurisdictions with approved boating safety  
9 programs within said county. Any fees not allocated to counties due to  
10 the absence of an approved boating safety program, shall be allocated  
11 to the commission for awards to local governments to offset law  
12 enforcement and boating safety impacts of boaters recreating in  
13 jurisdictions other than where registered.

14 NEW SECTION. Sec. 15. A new section is added to chapter 35.21 RCW  
15 to read as follows:

16 Any city or town has the authority, subject to the processes and  
17 limitation outlined in chapter 79.-- RCW (sections 1 through 11 of this  
18 act), to store, strip, use, auction, sell, salvage, scrap, or dispose  
19 of an abandoned or derelict vessel found on or above publicly or  
20 privately owned aquatic lands within the jurisdiction of the city or  
21 town.

22 NEW SECTION. Sec. 16. A new section is added to chapter 35A.21  
23 RCW to read as follows:

24 A code city has the authority, subject to the processes and  
25 limitation outlined in chapter 79.-- RCW (sections 1 through 11 of this  
26 act), to store, strip, use, auction, sell, salvage, scrap, or dispose  
27 of an abandoned or derelict vessel found on or above publicly or  
28 privately owned aquatic lands within the jurisdiction of the code city.

29 NEW SECTION. Sec. 17. A new section is added to chapter 36.32 RCW  
30 to read as follows:

31 A county has the authority, subject to the processes and limitation  
32 outlined in chapter 79.-- RCW (sections 1 through 11 of this act), to  
33 store, strip, use, auction, sell, salvage, scrap, or dispose of an  
34 abandoned or derelict vessel found on or above publicly or privately  
35 owned aquatic lands within the jurisdiction of the county.

1        NEW SECTION.    **Sec. 18.**    A new section is added to chapter 53.08 RCW  
2 to read as follows:

3        A port district has the authority, subject to the processes and  
4 limitation outlined in chapter 79.-- RCW (sections 1 through 11 of this  
5 act), to store, strip, use, auction, sell, salvage, scrap, or dispose  
6 of an abandoned or derelict vessel found on or above publicly or  
7 privately owned aquatic lands within the jurisdiction of the port  
8 district.

9        NEW SECTION.    **Sec. 19.**    A new section is added to chapter 77.12 RCW  
10 to read as follows:

11        The director has the authority, subject to the processes and  
12 limitation outlined in chapter 79.-- RCW (sections 1 through 11 of this  
13 act), to store, strip, use, auction, sell, salvage, scrap, or dispose  
14 of an abandoned or derelict vessel found on or above publicly or  
15 privately owned aquatic lands within the jurisdiction of the  
16 department.

17        **Sec. 20.**    RCW 79A.65.010 and 2000 c 11 s 115 are each amended to  
18 read as follows:

19        Unless the context clearly requires otherwise, the definitions in  
20 this section apply throughout this chapter.

21        (1) "Charges" means charges of the commission for moorage and  
22 storage, and all other charges related to the vessel and owing to or  
23 that become owing to the commission, including but not limited to costs  
24 of securing, disposing, or removing vessels, damages to any commission  
25 facility, and any costs of sale and related legal expenses for  
26 implementing RCW 79A.65.020 and 79A.65.030.

27        (2) "Commission" means the Washington state parks and recreation  
28 commission.

29        (3) "Commission facility" means any ((~~property~~ or)) moorage  
30 facility, as that term is defined in RCW 53.08.310, owned, leased,  
31 operated, managed, or otherwise controlled by the commission or by a  
32 person pursuant to a contract with the commission.

33        (4) "Owner" means a person who has a lawful right to possession of  
34 a vessel by purchase, exchange, gift, lease, inheritance, or legal  
35 action whether or not the vessel is subject to a security interest, and  
36 shall not include the holder of a bona fide security interest.

1 (5) "Person" means any natural person, firm, partnership,  
2 corporation, association, organization, or any other entity.

3 (6)(a) "Registered owner" means any person that is either: (i)  
4 Shown as the owner in a vessel certificate of documentation issued by  
5 the secretary of the United States department of transportation under  
6 46 U.S.C. Sec. 12103; or (ii) the registered owner or legal owner of a  
7 vessel for which a certificate of title has been issued under chapter  
8 88.02 RCW; or (iii) the owner of a vessel registered under the vessel  
9 registration laws of another state under which laws the commission can  
10 readily identify the ownership of vessels registered with that state.

11 (b) "Registered owner" also includes: (i) Any holder of a security  
12 interest or lien recorded with the United States department of  
13 transportation with respect to a vessel on which a certificate of  
14 documentation has been issued; (ii) any holder of a security interest  
15 identified in a certificate of title for a vessel registered under  
16 chapter 88.02 RCW; or (iii) any holder of a security interest in a  
17 vessel where the holder is identified in vessel registration  
18 information of a state with vessel registration laws that fall within  
19 (a)(iii) of this subsection and under which laws the commission can  
20 readily determine the identity of the holder.

21 (c) "Registered owner" does not include any vessel owner or holder  
22 of a lien or security interest in a vessel if the vessel does not have  
23 visible information affixed to it (such as name and hailing port or  
24 registration numbers) that will enable the commission to obtain  
25 ownership information for the vessel without incurring unreasonable  
26 expense.

27 (7) "Registered vessel" means a vessel having a registered owner.

28 (8) "Secured vessel" means any vessel that has been secured by the  
29 commission that remains in the commission's possession and control.

30 (9) "Unauthorized vessel" means a vessel using a commission  
31 facility of any type whose owner has not paid the required moorage fees  
32 or has left the vessel beyond the posted time limits, or a vessel  
33 otherwise present without permission of the commission.

34 (10) "Vessel" means every watercraft or part thereof constructed,  
35 used, or capable of being used as a means of transportation on the  
36 water. It includes any equipment or personal property on the vessel  
37 that is used or capable of being used for the operation, navigation, or  
38 maintenance of the vessel.

1       **Sec. 21.** RCW 79A.65.020 and 1994 c 51 s 2 are each amended to read  
2 as follows:

3       (1) The commission may take reasonable measures, including but not  
4 limited to the use of anchors, chains, ropes, and locks, or removal  
5 from the water, to secure unauthorized vessels located at or on a  
6 commission facility so that the unauthorized vessels are in the  
7 possession and control of the commission. At least ten days before  
8 securing any unauthorized registered vessel, the commission shall send  
9 notification by registered mail to the last registered owner or  
10 registered owners of the vessel at their last known address or  
11 addresses.

12       (2) The commission may take reasonable measures, including but not  
13 limited to the use of anchors, chains, ropes, locks, or removal from  
14 the water, to secure any vessel if the vessel, in the opinion of the  
15 commission, is a nuisance, is in danger of sinking or creating other  
16 damage to a commission facility, or is otherwise a threat to the  
17 health, safety, or welfare of the public or environment at a commission  
18 facility. The costs of any such procedure shall be paid by the  
19 vessel's owner.

20       (3) At the time of securing any vessel under subsection (1) or (2)  
21 of this section, the commission shall attach to the vessel a readily  
22 visible notice or, when practicable, shall post such notice in a  
23 conspicuous location at the commission facility in the event the vessel  
24 is removed from the premises. The notice shall be of a reasonable size  
25 and shall contain the following information:

26       (a) The date and time the notice was attached or posted;

27       (b) A statement that the vessel has been secured by the commission  
28 and that if the commission's charges, if any, are not paid and the  
29 vessel is not removed by . . . . . (the thirty-fifth consecutive day  
30 following the date of attachment or posting of the notice), the vessel  
31 will be considered abandoned and will be sold at public auction to  
32 satisfy the charges;

33       (c) The address and telephone number where additional information  
34 may be obtained concerning the securing of the vessel and conditions  
35 for its release; and

36       (d) A description of the owner's or secured party's rights under  
37 this chapter.

38       (4) With respect to registered vessels: Within five days of the  
39 date that notice is attached or posted under subsection (3) of this



1 section, the commission shall send such notice, by registered mail, to  
2 each registered owner.

3 (5) If a vessel is secured under subsection (1) or (2) of this  
4 section, the owner, or any person with a legal right to possess the  
5 vessel, may claim the vessel by:

6 (a) Making arrangements satisfactory to the commission for the  
7 immediate removal of the vessel from the commission's control or for  
8 authorized storage or moorage; and

9 (b) Making payment to the commission of all reasonable charges  
10 incurred by the commission in securing the vessel under subsections (1)  
11 and (2) of this section and of all moorage fees owed to the commission.

12 (6) A vessel is considered abandoned if, within the thirty-five day  
13 period following the date of attachment or posting of notice in  
14 subsection (3) of this section, the vessel has not been claimed under  
15 subsection (5) of this section.

16 (7) If the owner or owners of a vessel are unable to reimburse the  
17 commission for all reasonable charges under subsections (1) and (2) of  
18 this section within a reasonable time, the commission may seek  
19 reimbursement of seventy-five percent of all reasonable and auditable  
20 costs from the derelict vessel removal account established in section  
21 11 of this act.

22 **Sec. 22.** RCW 79A.65.030 and 2000 c 11 s 116 are each amended to  
23 read as follows:

24 (1) The commission may provide for the public sale of vessels  
25 considered abandoned under RCW 79A.65.020. At such sales, the vessels  
26 shall be sold for cash to the highest and best bidder. The commission  
27 may establish either a minimum bid or require a letter of credit, or  
28 both, to discourage the future reabandonment of the vessel.

29 (2) Before a vessel is sold, the commission shall make a reasonable  
30 effort to provide notice of sale, at least twenty days before the day  
31 of the sale, to each registered owner of a registered vessel and each  
32 owner of an unregistered vessel. The notice shall contain the time and  
33 place of the sale, a reasonable description of the vessel to be sold,  
34 and the amount of charges then owing with respect to the vessel, and a  
35 summary of the rights and procedures under this chapter. A notice of  
36 sale shall be published at least once, more than ten but not more than  
37 twenty days before the sale, in a newspaper of general circulation in  
38 the county in which the commission facility is located. This notice

1 shall include: (a) If known, the name of the vessel and the last owner  
2 and the owner's address; and (b) a reasonable description of the  
3 vessel. The commission may bid all or part of its charges at the sale  
4 and may become a purchaser at the sale.

5 (3) Before a vessel is sold, any person seeking to redeem a secured  
6 vessel may commence a lawsuit in the superior court for the county in  
7 which the vessel was secured to contest the commission's decision to  
8 secure the vessel or the amount of charges owing. This lawsuit shall  
9 be commenced within fifteen days of the date the notification was  
10 posted under RCW 79A.65.020(3), or the right to a hearing is deemed  
11 waived and the owner is liable for any charges owing the commission.  
12 In the event of litigation, the prevailing party is entitled to  
13 reasonable attorneys' fees and costs.

14 (4) The proceeds of a sale under this section shall be applied  
15 first to the payment of the amount of the reasonable charges incurred  
16 by the commission and moorage fees owed to the commission, then to the  
17 owner or to satisfy any liens of record or security interests of record  
18 on the vessel in the order of their priority. If an owner cannot in  
19 the exercise of due diligence be located by the commission within one  
20 year of the date of the sale, any excess funds from the sale, following  
21 the satisfaction of any bona fide security interest, shall revert to  
22 the ((department of revenue under chapter 63.29 RCW)) derelict vessel  
23 removal account established in section 11 of this act. If the sale is  
24 for a sum less than the applicable charges, the commission is entitled  
25 to assert a claim for the deficiency against the vessel owner. Nothing  
26 in this section prevents any lien holder or secured party from  
27 asserting a claim for any deficiency owed the lien holder or secured  
28 party.

29 (5) If no one purchases the vessel at a sale, the commission may  
30 proceed to properly dispose of the vessel in any way the commission  
31 considers appropriate, including, but not limited to, destruction of  
32 the vessel or by negotiated sale. The commission may assert a claim  
33 against the owner for any charges incurred thereby. If the vessel, or  
34 any part of the vessel, or any rights to the vessel, are sold under  
35 this subsection, any proceeds from the sale shall be distributed in the  
36 manner provided in subsection (4) of this section.

37 **Sec. 23.** RCW 53.08.320 and 1986 c 260 s 2 are each amended to read  
38 as follows:

1 A moorage facility operator may adopt all ((regulations)) rules  
2 necessary for rental and use of moorage facilities and for the  
3 expeditious collection of port charges. The ((regulations)) rules may  
4 also establish procedures for the enforcement of these ((regulations))  
5 rules by port district, city, county, metropolitan park district or  
6 town personnel. The ((regulations)) rules shall include the following:

7 (1) Procedures authorizing moorage facility personnel to take  
8 reasonable measures, including the use of chains, ropes, and locks, or  
9 removal from the water, to secure vessels within the moorage facility  
10 so that the vessels are in the possession and control of the moorage  
11 facility operator and cannot be removed from the moorage facility.  
12 These procedures may be used if an owner mooring or storing a vessel at  
13 the moorage facility fails, after being notified that charges are owing  
14 and of the owner's right to commence legal proceedings to contest that  
15 such charges are owing, to pay the port charges owed or to commence  
16 legal proceedings. Notification shall be by registered mail to the  
17 owner at his or her last known address. In the case of a transient  
18 vessel, or where no address was furnished by the owner, the moorage  
19 facility operator need not give such notice prior to securing the  
20 vessel. At the time of securing the vessel, an authorized moorage  
21 facility employee shall attach to the vessel a readily visible notice.  
22 The notice shall be of a reasonable size and shall contain the  
23 following information:

24 (a) The date and time the notice was attached;

25 (b) A statement that if the account is not paid in full within  
26 ninety days from the time the notice is attached, the vessel may be  
27 sold at public auction to satisfy the port charges; and

28 (c) The address and telephone number where additional information  
29 may be obtained concerning release of the vessel.

30 After a vessel is secured, the operator shall make a reasonable  
31 effort to notify the owner by registered mail in order to give the  
32 owner the information contained in the notice.

33 (2) Procedures authorizing moorage facility personnel at their  
34 discretion to move moored vessels ashore for storage within properties  
35 under the operator's control or for storage with private persons under  
36 their control as bailees of the moorage facility, if the vessel is, in  
37 the opinion of port personnel a nuisance, if the vessel is in danger of  
38 sinking or creating other damage, or is owing port charges. Costs of  
39 any such procedure shall be paid by the vessel's owner. If the owner

1 is not known, or unable to reimburse the moorage facility operator for  
2 the costs of these procedures, the mooring facility operators may seek  
3 reimbursement of seventy-five percent of all reasonable and auditable  
4 costs from the derelict vessel removal account established in section  
5 11 of this act.

6 (3) If a vessel is secured under subsection (1) of this section or  
7 moved ashore under subsection (2) of this section, the owner who is  
8 obligated to the moorage facility operator for port charges may regain  
9 possession of the vessel by:

10 (a) Making arrangements satisfactory with the moorage facility  
11 operator for the immediate removal of the vessel from the moorage  
12 facility or for authorized moorage; and

13 (b) Making payment to the moorage facility operator of all port  
14 charges, or by posting with the moorage facility operator a sufficient  
15 cash bond or other acceptable security, to be held in trust by the  
16 moorage facility operator pending written agreement of the parties with  
17 respect to payment by the vessel owner of the amount owing, or pending  
18 resolution of the matter of the charges in a civil action in a court of  
19 competent jurisdiction. After entry of judgment, including any  
20 appeals, in a court of competent jurisdiction, or after the parties  
21 reach agreement with respect to payment, the trust shall terminate and  
22 the moorage facility operator shall receive so much of the bond or  
23 other security as is agreed, or as is necessary to satisfy any  
24 judgment, costs, and interest as may be awarded to the moorage facility  
25 operator. The balance shall be refunded immediately to the owner at  
26 his or her last known address.

27 (4) If a vessel has been secured by the moorage facility operator  
28 under subsection (1) of this section and is not released to the owner  
29 under the bonding provisions of this section within ninety days after  
30 notifying or attempting to notify the owner under subsection (1) of  
31 this section, the vessel shall be conclusively presumed to have been  
32 abandoned by the owner.

33 (5) If a vessel moored or stored at a moorage facility is  
34 abandoned, the moorage facility operator may, by resolution of its  
35 legislative authority, authorize the public sale of the vessel by  
36 authorized personnel to the highest and best bidder for cash as  
37 ~~((follows\*))~~ prescribed by this subsection (5). Either a minimum bid  
38 may be established or a letter of credit may be required, or both, to  
39 discourage the future reabandonment of the vessel.

1 (a) Before the vessel is sold, the owner of the vessel shall be  
2 given at least twenty days' notice of the sale in the manner set forth  
3 in subsection (1) of this section if the name and address of the owner  
4 is known. The notice shall contain the time and place of the sale, a  
5 reasonable description of the vessel to be sold, and the amount of port  
6 charges owed with respect to the vessel. The notice of sale shall be  
7 published at least once, more than ten but not more than twenty days  
8 before the sale, in a newspaper of general circulation in the county in  
9 which the moorage facility is located. Such notice shall include the  
10 name of the vessel, if any, the last known owner and address, and a  
11 reasonable description of the vessel to be sold. The moorage facility  
12 operator may bid all or part of its port charges at the sale and may  
13 become a purchaser at the sale((+)).

14 (b) Before the vessel is sold, any person seeking to redeem an  
15 impounded vessel under this section may commence a lawsuit in the  
16 superior court for the county in which the vessel was impounded to  
17 contest the validity of the impoundment or the amount of the port  
18 charges owing. Such lawsuit must be commenced within ten days of the  
19 date the notification was provided pursuant to subsection (1) of this  
20 section, or the right to a hearing shall be deemed waived and the owner  
21 shall be liable for any port charges owing the moorage facility  
22 operator. In the event of litigation, the prevailing party shall be  
23 entitled to reasonable attorneys' fees and costs.

24 (c) The proceeds of a sale under this section shall first be  
25 applied to the payment of port charges. The balance, if any, shall be  
26 paid to the owner. If the owner cannot in the exercise of due  
27 diligence be located by the moorage facility operator within one year  
28 of the date of the sale, the excess funds from the sale shall revert to  
29 the ~~((department of revenue pursuant to chapter 63.29 RCW))~~ derelict  
30 vessel removal account established in section 11 of this act. If the  
31 sale is for a sum less than the applicable port charges, the moorage  
32 facility operator is entitled to assert a claim for a deficiency.

33 (d) In the event no one purchases the vessel at a sale, or a vessel  
34 is not removed from the premises or other arrangements are not made  
35 within ten days of sale, title to the vessel will revert to the moorage  
36 facility operator.

37 (6) The ~~((regulations))~~ rules authorized under this section shall  
38 be enforceable only if the moorage facility has had its tariff

1 containing such ((~~regulations~~)) rules conspicuously posted at its  
2 moorage facility at all times.

3 NEW SECTION. **Sec. 24.** Sections 1 through 11 of this act  
4 constitute a new chapter in Title 79 RCW.

5 NEW SECTION. **Sec. 25.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 26.** This act takes effect January 1, 2003."

10 **ESHB 2376** - S COMM AMD  
11 By Committee on Natural Resources, Parks & Shorelines

12  
13 On page 1, beginning on line 1 of the title, after "vessels;"  
14 strike the remainder of the title and insert "amending RCW 88.02.030,  
15 88.02.050, 88.02.040, 79A.65.010, 79A.65.020, 79A.65.030, and  
16 53.08.320; adding a new section to chapter 35.21 RCW; adding a new  
17 section to chapter 35A.21 RCW; adding a new section to chapter 36.32  
18 RCW; adding a new section to chapter 53.08 RCW; adding a new section to  
19 chapter 77.12 RCW; adding a new chapter to Title 79 RCW; prescribing  
20 penalties; and providing an effective date."

--- END ---