

2 **ESHB 2376** - S COMM AMD
3 By Committee on Ways & Means

4 ADOPTED 03/07/02

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. During the 2001-2003 biennium, up to forty
33 percent of the expenditures from the account may be used for
34 administrative expenses of the department of licensing and department
35 of natural resources in implementing this chapter. In each subsequent

1 biennium, up to twenty percent of the expenditures from the account may
2 be used for administrative expenses of the department of licensing and
3 department of natural resources in implementing this chapter.

4 (2) If the balance of the account reaches one million dollars as of
5 March 1st of any year, the department must notify the department of
6 licensing and the collection of any fees associated with this account
7 must be suspended for the following fiscal year.

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

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

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

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

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

3 Vessel registration is required under this chapter except for the
4 following:

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

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

9 (3) Vessels either (a) registered or numbered under the laws of a
10 country other than the United States; or (b) having a valid United
11 States customs service cruising license issued pursuant to 19 C.F.R.
12 Sec. 4.94. On or before the sixty-first day of use in the state, any
13 vessel in the state under this subsection shall obtain an
14 identification document from the department of licensing, its agents,
15 or subagents indicating when the vessel first came into the state. At
16 the time of any issuance of an identification document, a (~~twenty-~~
17 ~~five~~) thirty dollar identification document fee shall be paid by the
18 vessel owner to the department of licensing for the cost of providing
19 the identification document by the department of licensing. Five
20 dollars from each such transaction must be deposited in the derelict
21 vessel removal account created in section 11 of this act. Any moneys
22 remaining from the fee after the payment of costs and the deposit to
23 the derelict vessel removal account shall be allocated to counties by
24 the state treasurer for approved boating safety programs under RCW
25 88.02.045. The department of licensing shall adopt rules to implement
26 its duties under this subsection, including issuing and displaying the
27 identification document and collecting the (~~twenty-five~~) thirty
28 dollar fee;

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

36 (5) Vessels owned by a nonresident if the vessel is located upon
37 the waters of this state exclusively for repairs, alteration, or
38 reconstruction, or any testing related to the repair, alteration, or
39 reconstruction conducted in this state if an employee of the repair,

1 alteration, or construction facility is on board the vessel during any
2 testing(~~(:—PROVIDED,—That))~~). However, any vessel owned by a
3 nonresident is located upon the waters of this state exclusively for
4 repairs, alteration, reconstruction, or testing for a period longer
5 than sixty days, that the nonresident shall file an affidavit with the
6 department of revenue verifying the vessel is located upon the waters
7 of this state for repair, alteration, reconstruction, or testing and
8 shall continue to file such affidavit every sixty days thereafter,
9 while the vessel is located upon the waters of this state exclusively
10 for repairs, alteration, reconstruction, or testing;

11 (6) Vessels equipped with propulsion machinery of less than ten
12 horsepower that:

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

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

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

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

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

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

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

35 (11) On and after January 1, 1998, vessels owned by a nonresident
36 individual brought into the state for his or her use or enjoyment while
37 temporarily within the state for not more than six months in any
38 continuous twelve-month period, unless the vessel is used in conducting
39 a nontransitory business activity within the state. However, the

1 vessel must have been issued a valid number under federal law or by an
2 approved issuing authority of the state of principal operation. On or
3 before the sixty-first day of use in the state, any vessel temporarily
4 in the state under this subsection shall obtain an identification
5 document from the department of licensing, its agents, or subagents
6 indicating when the vessel first came into the state. An
7 identification document shall be valid for a period of two months. At
8 the time of any issuance of an identification document, a twenty-five
9 dollar identification document fee shall be paid by the vessel owner to
10 the department of licensing for the cost of providing the
11 identification document by the department of licensing. Any moneys
12 remaining from the fee after payment of costs shall be allocated to
13 counties by the state treasurer for approved boating safety programs
14 under RCW 88.02.045. The department of licensing shall adopt rules to
15 implement its duties under this subsection, including issuing and
16 displaying the identification document and collecting the twenty-five
17 dollar fee.

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

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

37 Upon receipt of the application and the registration fee, the
38 department shall assign a registration number and issue a decal for

1 each vessel. The registration number and decal shall be issued and
2 affixed to the vessel in a manner prescribed by the department
3 consistent with the standard numbering system for vessels set forth in
4 volume 33, part 174, of the code of federal regulations. A valid decal
5 affixed as prescribed shall indicate compliance with the annual
6 registration requirements of this chapter.

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

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

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

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

35 The department shall provide for the issuance of vessel
36 registrations and may appoint agents for collecting fees and issuing
37 registration numbers and decals. General fees for vessel registrations
38 collected by the director shall be deposited in the general fund:

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

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

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

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

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

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

35 A county has the authority, subject to the processes and limitation
36 outlined in chapter 79.-- RCW (sections 1 through 11 of this act), to

1 store, strip, use, auction, sell, salvage, scrap, or dispose of an
2 abandoned or derelict vessel found on or above publicly or privately
3 owned aquatic lands within the jurisdiction of the county.

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

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

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

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

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

22 Unless the context clearly requires otherwise, the definitions in
23 this section apply throughout this chapter.

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

30 (2) "Commission" means the Washington state parks and recreation
31 commission.

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

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

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

7 (6)(a) "Registered owner" means any person that is either: (i)
8 Shown as the owner in a vessel certificate of documentation issued by
9 the secretary of the United States department of transportation under
10 46 U.S.C. Sec. 12103; or (ii) the registered owner or legal owner of a
11 vessel for which a certificate of title has been issued under chapter
12 88.02 RCW; or (iii) the owner of a vessel registered under the vessel
13 registration laws of another state under which laws the commission can
14 readily identify the ownership of vessels registered with that state.

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

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

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

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

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

38 (10) "Vessel" means every watercraft or part thereof constructed,
39 used, or capable of being used as a means of transportation on the

1 water. It includes any equipment or personal property on the vessel
2 that is used or capable of being used for the operation, navigation, or
3 maintenance of the vessel.

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

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

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

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

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

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

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

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

3 (4) With respect to registered vessels: Within five days of the
4 date that notice is attached or posted under subsection (3) of this
5 section, the commission shall send such notice, by registered mail, to
6 each registered owner.

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

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

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

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

20 (7) If the owner or owners of a vessel are unable to reimburse the
21 commission for all reasonable charges under subsections (1) and (2) of
22 this section within a reasonable time, the commission may seek
23 reimbursement of seventy-five percent of all reasonable and auditable
24 costs from the derelict vessel removal account established in section
25 11 of this act.

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

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

33 (2) Before a vessel is sold, the commission shall make a reasonable
34 effort to provide notice of sale, at least twenty days before the day
35 of the sale, to each registered owner of a registered vessel and each
36 owner of an unregistered vessel. The notice shall contain the time and
37 place of the sale, a reasonable description of the vessel to be sold,
38 and the amount of charges then owing with respect to the vessel, and a

1 summary of the rights and procedures under this chapter. A notice of
2 sale shall be published at least once, more than ten but not more than
3 twenty days before the sale, in a newspaper of general circulation in
4 the county in which the commission facility is located. This notice
5 shall include: (a) If known, the name of the vessel and the last owner
6 and the owner's address; and (b) a reasonable description of the
7 vessel. The commission may bid all or part of its charges at the sale
8 and may become a purchaser at the sale.

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

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

33 (5) If no one purchases the vessel at a sale, the commission may
34 proceed to properly dispose of the vessel in any way the commission
35 considers appropriate, including, but not limited to, destruction of
36 the vessel or by negotiated sale. The commission may assert a claim
37 against the owner for any charges incurred thereby. If the vessel, or
38 any part of the vessel, or any rights to the vessel, are sold under

1 this subsection, any proceeds from the sale shall be distributed in the
2 manner provided in subsection (4) of this section.

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

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

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

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

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

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

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

37 (2) Procedures authorizing moorage facility personnel at their
38 discretion to move moored vessels ashore for storage within properties

1 under the operator's control or for storage with private persons under
2 their control as bailees of the moorage facility, if the vessel is, in
3 the opinion of port personnel a nuisance, if the vessel is in danger of
4 sinking or creating other damage, or is owing port charges. Costs of
5 any such procedure shall be paid by the vessel's owner. If the owner
6 is not known, or unable to reimburse the moorage facility operator for
7 the costs of these procedures, the mooring facility operators may seek
8 reimbursement of seventy-five percent of all reasonable and auditable
9 costs from the derelict vessel removal account established in section
10 11 of this act.

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

15 (a) Making arrangements satisfactory with the moorage facility
16 operator for the immediate removal of the vessel from the moorage
17 facility or for authorized moorage; and

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

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

38 (5) If a vessel moored or stored at a moorage facility is
39 abandoned, the moorage facility operator may, by resolution of its

1 legislative authority, authorize the public sale of the vessel by
2 authorized personnel to the highest and best bidder for cash as
3 ~~((follows:))~~ prescribed by this subsection (5). Either a minimum bid
4 may be established or a letter of credit may be required, or both, to
5 discourage the future reabandonment of the vessel.

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

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

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

38 (d) In the event no one purchases the vessel at a sale, or a vessel
39 is not removed from the premises or other arrangements are not made

1 within ten days of sale, title to the vessel will revert to the moorage
2 facility operator.

3 (6) The ((~~regulations~~)) rules authorized under this section shall
4 be enforceable only if the moorage facility has had its tariff
5 containing such ((~~regulations~~)) rules conspicuously posted at its
6 moorage facility at all times.

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

9 NEW SECTION. **Sec. 25.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

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

14 **ESHB 2376** - S COMM AMD
15 By Committee on Ways & Means

16 ADOPTED 03/07/02

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

--- END ---