
ENGROSSED SUBSTITUTE HOUSE BILL 2376

State of Washington

57th Legislature

2002 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Rockefeller, Doumit, Eickmeyer, Dickerson, Hunt, Lantz, Edwards, Romero, Haigh, McDermott and Jackley)

Read first time 02/06/2002. Referred to Committee on .

1 AN ACT Relating to abandoned and derelict vessels; amending RCW
2 88.02.030, 88.02.050, 88.02.040, 79A.65.010, 79A.65.020, 79A.65.030,
3 and 53.08.320; adding a new section to chapter 35.21 RCW; adding a new
4 section to chapter 35A.21 RCW; adding a new section to chapter 36.32
5 RCW; adding a new section to chapter 53.08 RCW; adding a new section to
6 chapter 77.12 RCW; adding a new chapter to Title 79 RCW; prescribing
7 penalties; and providing an effective date.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

1 the costs associated with the removal of derelict vessels becomes a
2 burden on public entities and the taxpaying public.

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

5 (1) "Abandoned vessel" means the vessel's owner is not known or
6 cannot be located, or if the vessel's owner is known and located but is
7 unwilling to take control of the vessel, and the vessel has been left,
8 moored, or anchored in the same area without the express consent, or
9 contrary to the rules, of the owner, manager, or lessee of the aquatic
10 lands below or on which the vessel is located for either a period of
11 more than thirty consecutive days or for more than a total of ninety
12 days in any three hundred sixty-five day period. For the purposes of
13 this subsection (1) only, "in the same area" means within a radius of
14 five miles of any location where the vessel was previously moored or
15 anchored on aquatic lands.

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

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

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

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

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

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

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

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

35 (ii) Is obstructing a waterway; or

36 (iii) Is endangering life or property.

37 (6) "Owner" means any natural person, firm, partnership,
38 corporation, association, government entity, or organization that has

1 a lawful right to possession of a vessel by purchase, exchange, gift,
2 lease, inheritance, or legal action whether or not the vessel is
3 subject to a security interest.

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

5 NEW SECTION. **Sec. 3.** This chapter is not intended to limit or
6 constrain the ability and authority of the authorized public entities
7 to enact and enforce ordinances or other regulations relating to
8 derelict and abandoned vessels, or to take any actions authorized by
9 federal or state law in responding to derelict or abandoned vessels.
10 This chapter is also not intended to be the sole remedy available to
11 authorized public entities against the owners of derelict and abandoned
12 vessels.

13 NEW SECTION. **Sec. 4.** (1) An authorized public entity has the
14 authority, subject to the processes and limitations of this chapter, to
15 store, strip, use, auction, sell, salvage, scrap, or dispose of an
16 abandoned or derelict vessel existing on or above aquatic lands within
17 the jurisdiction of the authorized public entity. A vessel disposal
18 must be done in an environmentally sound manner and in accordance with
19 all federal, state, and local laws, including the state solid waste
20 disposal provisions provided for in chapter 70.95 RCW. Scuttling or
21 sinking of a vessel is only permissible after obtaining the express
22 permission of the owner or owners of the aquatic lands below where the
23 scuttling or sinking would occur, and obtaining all necessary state and
24 federal permits or licenses.

25 (2) The primary responsibility to remove a derelict or abandoned
26 vessel belongs to the owner, operator, or lessee of the moorage
27 facility or the aquatic lands where the vessel is located. If the
28 authorized public entity with the primary responsibility is unwilling
29 or unable to exercise the authority granted by this section, it may
30 request the department to assume the authorized public entity's
31 authority for a particular vessel. The department may at its
32 discretion assume the authorized public entity's authority for a
33 particular vessel after being requested to do so.

34 (3) The authority granted by this chapter is permissive, and no
35 authorized public entity has a duty to exercise the authority. No
36 liability attaches to an authorized public entity that chooses not to
37 exercise this authority.

1 (4) The department may adopt rules that are consistent with this
2 chapter and necessary to administer the authority granted by this
3 section.

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

8 (a) Mail notice of its intent to obtain custody, at least twenty
9 days prior to taking custody, to the last known address of the previous
10 owner to register the vessel in any state or with the federal
11 government and to any lien holders or secured interests on record. A
12 notice need not be sent to the purported owner or any other person
13 whose interest in the vessel is not recorded with a state or federal
14 agency;

15 (b) Post notice of its intent clearly on the vessel for thirty days
16 and publish its intent at least once, more than ten days but less than
17 twenty days prior to taking custody, in a newspaper of general
18 circulation for the county in which the vessel is located; and

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

23 (2) All notices sent, posted, or published in accordance with this
24 section must, at a minimum, explain the intent of the authorized public
25 entity to take custody of the vessel, the rights of the authorized
26 public entity after taking custody of the vessel as provided in section
27 4 of this act, the procedures the owner must follow in order to avoid
28 custody being taken by the authorized public entity, the procedures the
29 owner must follow in order to reclaim possession after custody is taken
30 by the authorized public entity, and the financial liabilities that the
31 owner may incur as provided for in section 7 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

1 preference to the least costly, environmentally sound, reasonable
2 disposal option. Any disposal operations must be consistent with the
3 state solid waste disposal provisions provided for in chapter 70.95
4 RCW.

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

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

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

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

32 (2) Reimbursement for cost and collections of the fine may be
33 sought from an owner who is identified subsequent to the vessel's
34 removal and disposal.

35 (3) If the full amount of all costs due to the authorized public
36 entity under this chapter is not paid to the authorized public entity
37 within thirty days after first notifying the responsible parties of the
38 amounts owed, the authorized public entity or the department may bring

1 an action in any court of competent jurisdiction to recover the costs,
2 plus reasonable attorneys' fees and costs incurred by the authorized
3 public entity.

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

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

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

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

1 (2) If the balance of the account reaches one million dollars as of
2 June 30th of any year, the collection of any fees associated with this
3 account must be suspended for the following fiscal year.

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

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

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

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

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

1 Vessel registration is required under this chapter except for the
2 following:

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

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

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

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

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

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

9 (6) Vessels equipped with propulsion machinery of less than ten
10 horsepower that:

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

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

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

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

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

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

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

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

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

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

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

35 Upon receipt of the application and the registration fee, the
36 department shall assign a registration number and issue a decal for
37 each vessel. The registration number and decal shall be issued and
38 affixed to the vessel in a manner prescribed by the department

1 consistent with the standard numbering system for vessels set forth in
2 volume 33, part 174, of the code of federal regulations. A valid decal
3 affixed as prescribed shall indicate compliance with the annual
4 registration requirements of this chapter.

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

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

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

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

33 The department shall provide for the issuance of vessel
34 registrations and may appoint agents for collecting fees and issuing
35 registration numbers and decals. General fees for vessel registrations
36 collected by the director shall be deposited in the general fund:
37 PROVIDED, That any amount above one million one hundred thousand
38 dollars per fiscal year shall be allocated to counties by the state

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

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

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

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

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

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

33 A county has the authority, subject to the processes and limitation
34 outlined in chapter 79.-- RCW (sections 1 through 11 of this act), to
35 store, strip, use, auction, sell, salvage, scrap, or dispose of an

1 abandoned or derelict vessel existing on or above publicly or privately
2 owned aquatic lands within the jurisdiction of the county.

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

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

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

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

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

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

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

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

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

35 (4) "Owner" means a person who has a lawful right to possession of
36 a vessel by purchase, exchange, gift, lease, inheritance, or legal

1 action whether or not the vessel is subject to a security interest, and
2 shall not include the holder of a bona fide security interest.

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

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

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

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

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

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

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

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

1 that is used or capable of being used for the operation, navigation, or
2 maintenance of the vessel.

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

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

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

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

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

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

35 (c) The address and telephone number where additional information
36 may be obtained concerning the securing of the vessel and conditions
37 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.

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