

SSB 5271 - H COMM AMD
By Committee on Judiciary

ADOPTED 04/01/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 79.100.110 and 2006 c 153 s 1 are each amended to
4 read as follows:

5 (1) A person who causes a vessel to become abandoned or derelict
6 upon aquatic lands is guilty of a misdemeanor.

7 (2) A person who intentionally, through action or inaction and
8 without the appropriate state, local, or federal authorization, causes
9 a vessel to sink, break up, or block a navigational channel upon
10 aquatic lands is guilty of a misdemeanor.

11 **Sec. 2.** RCW 79.100.130 and 2007 c 342 s 3 are each amended to read
12 as follows:

13 A marina owner may contract with a local government for the purpose
14 of participating in the derelict vessel removal program. The local
15 government shall serve as the authorized public entity for the removal
16 of the derelict or abandoned vessel from the marina owner's property.
17 The contract must provide for the marina owner to be financially
18 responsible for the removal costs that are not reimbursed by the
19 department as provided under RCW 79.100.100, and any additional
20 reasonable administrative costs incurred by the local government during
21 the removal of the derelict or abandoned vessel. Prior to the
22 commencement of any removal which will seek reimbursement from the
23 derelict vessel removal program, the contract and the proposed vessel
24 removal shall be submitted to the department for review and approval.
25 The local government shall use the procedure specified under RCW
26 79.100.100(6).

27 **Sec. 3.** RCW 53.08.320 and 2002 c 286 s 23 are each amended to read
28 as follows:

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

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

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

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

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

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

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

1 any such procedure shall be paid by the vessel's owner. If the owner
2 is not known, or unable to reimburse the moorage facility operator for
3 the costs of these procedures, the mooring facility operators may seek
4 reimbursement of (~~seventy-five~~) ninety percent of all reasonable and
5 auditable costs from the derelict vessel removal account established in
6 RCW 79.100.100.

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

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

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

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

34 (5) If a vessel moored or stored at a moorage facility is
35 abandoned, the moorage facility operator may, by resolution of its
36 legislative authority, authorize the public sale of the vessel by
37 authorized personnel to the highest and best bidder for cash as

1 prescribed by this subsection (5). Either a minimum bid may be
2 established or a letter of credit may be required, or both, to
3 discourage the future reabandonment of the vessel.

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

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

27 (c) The proceeds of a sale under this section shall first be
28 applied to the payment of port charges. The balance, if any, shall be
29 paid to the owner. If the owner cannot in the exercise of due
30 diligence be located by the moorage facility operator within one year
31 of the date of the sale, the excess funds from the sale shall revert to
32 the derelict vessel removal account established in RCW 79.100.100. If
33 the sale is for a sum less than the applicable port charges, the
34 moorage facility operator is entitled to assert a claim for a
35 deficiency.

36 (d) In the event no one purchases the vessel at a sale, or a vessel
37 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 rules authorized under this section shall be enforceable
4 only if the moorage facility has had its tariff containing such rules
5 conspicuously posted at its moorage facility at all times.

6 **Sec. 4.** RCW 79.100.030 and 2002 c 286 s 4 are each amended to read
7 as follows:

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

20 (2) The primary responsibility to remove a derelict or abandoned
21 vessel belongs to the owner, operator, or lessee of the moorage
22 facility or the aquatic lands where the vessel is located. If the
23 authorized public entity with the primary responsibility is unwilling
24 or unable to exercise the authority granted by this section, it may
25 request the department to assume the authorized public entity's
26 authority for a particular vessel. The department may at its
27 discretion assume the authorized public entity's authority for a
28 particular vessel after being requested to do so. For vessels not at
29 a moorage facility, an authorized public entity with jurisdiction over
30 the aquatic lands where the vessel is located may, at its discretion,
31 request to assume primary responsibility for that particular vessel
32 from the owner of the aquatic lands where the vessel is located.

33 (3) The authority granted by this chapter is permissive, and no
34 authorized public entity has a duty to exercise the authority. No
35 liability attaches to an authorized public entity that chooses not to
36 exercise this authority. An authorized public entity, in the good
37 faith performance of the actions authorized under this chapter, is not

1 liable for civil damages resulting from any act or omission in the
2 performance of the actions other than acts or omissions constituting
3 gross negligence or willful or wanton misconduct. Any person whose
4 assistance has been requested by an authorized public entity, who has
5 entered into a written agreement pursuant to RCW 79.100.070, and who,
6 in good faith, renders assistance or advice with respect to activities
7 conducted by an authorized public entity pursuant to this chapter, is
8 not liable for civil damages resulting from any act or omission in the
9 rendering of the assistance or advice, other than acts or omissions
10 constituting gross negligence or willful or wanton misconduct."

11 Correct the title.

EFFECT: Specifies that for the purposes of criminal liability for intentionally causing a vessel to sink, break up, or block navigational channels upon aquatic lands, "without authorization" means without the appropriate state, local, or federal authorization.

Specifies that the new crime of intentionally and without authorization causing a vessel to sink, break up, or block channels, must be "upon aquatic lands" (making the language consistent with the current crime of causing a vessel to become abandoned or derelict upon aquatic lands).

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