

SHB 1605 - S COMM AMD

By Committee on Law & Justice

ADOPTED 04/07/2017

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 79A.60
4 RCW to read as follows:

5 (1) Whenever the operator of a vessel is arrested for a violation
6 of RCW 79A.60.040, the arresting officer, or another officer acting
7 at the arresting officer's direction, has authority to impound the
8 vessel as provided in this section.

9 (2) This section is not intended to limit or constrain the
10 ability of local government from enacting and enforcing ordinances or
11 other regulations relating to the impoundment of vessels for the
12 purposes of enforcing RCW 79A.60.040.

13 (3) Unless vessel impound is required for evidentiary purposes, a
14 law enforcement officer must seek a series of reasonable alternatives
15 to impound before impounding the vessel. Reasonable alternatives to
16 impound may include, but are not limited to:

17 (a) Working with the vessel's owner to locate a qualified
18 operator who can take possession of the vessel within thirty minutes
19 following the arrest of the vessel's operator and giving possession
20 of the vessel to such a person;

21 (b) Leaving the vessel at a marina, dock, or moorage facility,
22 provided that:

23 (i) The owner is present and willing to sign a liability waiver
24 by which the owner agrees to waive any claims related to such an
25 action against the law enforcement officer and the officer's agency
26 and indemnify the officer and the agency against any claims related
27 to such an action by any third party; and

28 (ii) The owner agrees to pay any applicable moorage charges or
29 fees; and

30 (c) Towing the vessel to the closest boat ramp, marina, or
31 similar type facility where the owner can meet the impounding officer
32 within thirty minutes in order to:

1 (i) Moor the vessel by accepting any applicable moorage charges
2 or fees; or

3 (ii) Take possession of the vessel if the owner was not present
4 at the time of the arrest.

5 (4) For the purposes of this section, storing an impounded vessel
6 may include, but is not limited to:

7 (a) Removing the vessel to and placing it in a secure or other
8 type of moorage facility; or

9 (b) Placing the vessel in the custody of an operator licensed by
10 the United States coast guard per 46 C.F.R. Sec. 11.482 to provide
11 commercial assistance towing services in Washington state who must:

12 (i) Tow it to a storage facility operated by the towing entity
13 for storage or to a moorage facility for storage; or

14 (ii) Tow it to a location designated by the operator or owner of
15 the vessel.

16 (5) In exigent circumstances, an impounding officer may
17 temporarily attach an impounded vessel to a mooring buoy or anchor
18 the vessel to the bottom for up to twenty-four hours, after which
19 time the impounding officer must move or cause the vessel to be moved
20 to an appropriate facility for storage as outlined in subsection (4)
21 of this section.

22 (6) If the impounding officer secures a vessel by placing it on
23 its trailer, the officer, moorage facility representative, or
24 commercial assistance towing service is authorized to detach the
25 vessel's trailer from the vehicle to which it is attached, attach the
26 trailer to an impounding vehicle, operate the vessel to load it on
27 the trailer, and then tow the vessel on its trailer to the storage
28 facility.

29 (7) All vessels must be handled appropriately and returned in
30 substantially the same condition as they existed before being
31 impounded, unless forfeited pursuant to subsection (12) of this
32 section. Except as provided in subsection (12)(b) of this section,
33 all personal property in the vessel must be kept intact and must be
34 returned to the vessel's owner or agent during the normal business
35 hours of the entity storing the vessel upon request, provided the
36 vessel owner, or the owner's agent, is able to provide sufficient
37 proof of his or her identity.

38 (8) No moorage facility or vessel towing service provider is
39 required to accept an impounded or otherwise secured vessel under
40 this section for towing or storage. An impounding officer intending

1 to secure a vessel by means of storing it at a moorage facility must
2 have the permission of the owner or operator of the moorage facility
3 prior to leaving the vessel at the facility. The impounding officer
4 shall identify an authorized person on the vessel impound
5 authorization and inventory form to represent the vessel impound
6 facility. The officer must provide a copy of the vessel impound
7 authorization and inventory form to the designated person
8 representing the vessel impound facility along with the addresses of
9 the registered and legal owners of the vessel. The moorage facility
10 may require that the impounding officer's agency take responsibility
11 for the foreclosure process set forth in subsection (12) of this
12 section before they consent to accept an impounded vessel.

13 (9)(a) An impounding officer impounding a vessel pursuant to this
14 section shall notify the legal and registered owner or owners of the
15 impoundment of the vessel. The notification must be in writing and
16 sent within one business day after the impound by first-class mail,
17 digital transmission, or facsimile to the last known address of the
18 registered and legal owner or owners of the vessel, as identified by
19 the department of licensing, and must inform the owner or owners of
20 the identity of the person or agency authorizing the impound. The
21 impounding officer may serve the operator with the vessel impound
22 authorization and inventory form at the time of impound if the
23 operator is a legal or registered owner of the vessel. Personal
24 service of the vessel impound authorization and inventory form meets
25 the notice requirement of this subsection with respect to the legal
26 or registered owner personally served. The notification must be
27 provided on a vessel impound authorization and inventory form and
28 include: (i) The name, address, and telephone number of the facility
29 where the vessel is being held; (ii) the right of redemption and
30 opportunity for a hearing to contest the validity of the impoundment;
31 and (iii) the rate that is being charged for the storage of the
32 vessel while impounded.

33 (b) A notice does not need to be sent to the legal or registered
34 owner or owners of an impounded vessel if the vessel has been
35 redeemed.

36 (c) The impounded vessel may not be redeemed by the operator
37 within a twelve-hour period starting at the time of the operator's
38 arrest. The vessel may be redeemed by or released to an owner or an
39 agent of the owner that is not the operator within the twelve-hour
40 period following arrest.

1 (10) A moorage facility that accepts a vessel impounded pursuant
2 to this section for storage may charge the owner of the vessel up to
3 one hundred twenty-five percent of the normal moorage rates of
4 tenants or guests in addition to a fee for securing the impounded
5 vessel. A moorage facility must store the vessel in the least costly
6 boat slip or storage area available that is appropriate for the
7 vessel size. An entity that provides emergency vessel towing services
8 that accepts a vessel impounded pursuant to this section for towing
9 or storage, or both, may charge its normal towing and storage fees.
10 The costs of removal and storage of vessels under this section is a
11 lien upon the vessel until paid, unless the impoundment is determined
12 to be invalid. The registered owner of a vessel impounded pursuant to
13 this section is responsible for paying all fees associated with the
14 towing and storage of the vessel resulting from its impoundment,
15 except as otherwise provided in subsection (15) of this section.

16 (11) Within fifteen days of impoundment of the vessel, or until
17 the vessel is forfeited pursuant to subsection (12) of this section,
18 the legal or registered owner of a vessel impounded and stored
19 pursuant to this section may redeem the vessel by paying all towing
20 and storage fees charged as allowed in subsection (10) of this
21 section. Within fifteen days of impoundment of the vessel, or until
22 the vessel is forfeited pursuant to subsection (12) of this section,
23 any person who shows proof of ownership or written authorization from
24 the impounded vessel's registered or legal owner or the vessel's
25 insurer may view the vessel without charge during the normal business
26 hours of the entity storing the vessel. The moorage facility may
27 request that a representative of the impounding agency be present
28 during redemption. If requested, the impounding agency must provide a
29 representative as requested by the moorage facility.

30 (12) If an impounded vessel stored pursuant to this section is
31 not redeemed by its registered or legal owner pursuant to subsection
32 (11) of this section within fifteen days of its impoundment, the
33 entity storing the vessel, or the agency of the impounding officer,
34 if required by the moorage facility under subsection (8) of this
35 section, may initiate foreclosure. Forfeiture by the vessel owner is
36 complete twenty days after mailing of the notice required by this
37 subsection, unless within that time the owner, or any lienholder or
38 holder of a security interest, pays all fees associated with the
39 towing and storage of the vessel resulting from its impoundment.
40 However, foreclosure may not be completed while a hearing under

1 subsection (15) of this section to contest the validity of the
2 impoundment is pending in district or municipal court or while any
3 appeal of a decision of the district or municipal court on the
4 validity of the impoundment is pending.

5 (a) In order to foreclose on the vessel, the foreclosing entity
6 must mail notice of its intent. Such a notice must, at a minimum,
7 state: (i) The intent of the foreclosing entity to foreclose on the
8 vessel; (ii) that, when the foreclosure process is complete, the
9 owner forfeits all ownership interest in the vessel; (iii) the right
10 of the foreclosing entity to take possession of or dispose of the
11 vessel upon completion of the foreclosure process; and (iv) that the
12 owner, or other interested person or entity, may avoid forfeiture of
13 the vessel by paying all fees associated with the towing and storage
14 of the vessel resulting from its impoundment within twenty days of
15 mailing of the notice. The notice must be mailed to the owner of the
16 vessel at the address on file with the state with which the vessel is
17 registered, or on file with the federal government, if the vessel is
18 registered with the federal government, and any lienholder or secured
19 interests on record. A notice need not be sent to the purported owner
20 or any other person whose interest in the vessel is not recorded with
21 a state or with the federal government.

22 (b) Upon completion of the foreclosure process, the registered
23 and legal owners of the vessel forfeit any and all ownership interest
24 in it and the entity administering the foreclosure process must
25 dispose of it through sale. The proceeds of a sale under this section
26 shall be applied first to payment of the amount of reasonable charges
27 incurred by the entity for towing, storage, and sale, then to the
28 owner or to satisfy any liens of record or security interests of
29 record on the vessel in the order of their priority. If the sale is
30 for a sum less than the applicable charges, the foreclosing entity is
31 entitled to assert a claim for the deficiency against the vessel
32 owner. Nothing in this section prevents any lien holder or secured
33 party from asserting a claim for any deficiency owed the lien holder
34 or secured party. If more than one thousand dollars remains after the
35 satisfaction of amounts owed to the entity and to any owner or bona
36 fide security interest, then the foreclosing entity must remit the
37 moneys to the department of licensing for deposit in the derelict
38 vessel removal account established in RCW 79.100.100. A copy of the
39 forfeited vessel disposition report form identifying the vessel
40 resulting in any surplus shall accompany the remitted funds. Transfer

1 of ownership of the vessel after foreclosure must comply with RCW
2 79.100.150, when applicable. All personal property in the vessel not
3 claimed prior to foreclosure must be turned over to the law
4 enforcement agency that authorized the impoundment. The personal
5 property must be disposed of pursuant to chapter 63.32 or 63.40 RCW,
6 or as otherwise provided by law. Within fourteen days of the
7 completion of the foreclosure process of a vessel pursuant to this
8 subsection, the foreclosing entity shall send a forfeited vessel
9 disposition report, together with a copy of the vessel impound
10 authorization and inventory form and the notice of intent to
11 foreclose, to the department of licensing so that the department may
12 include documentation in the ownership records of the vessel. The
13 vessel disposition information sent to the department of licensing on
14 the forfeited vessel disposition report relieves the previous owner
15 of the vessel from any civil or criminal liability for the operation
16 of the vessel from the date of sale thereafter, and transfers full
17 liability for the vessel to the party to whom the vessel is
18 transferred by the foreclosing entity.

19 (13) Any individual or entity whose assistance has been requested
20 by an impounding officer who in good faith provides trailering,
21 towing, or secured or other type of moorage of a vessel impounded
22 pursuant to this section is not liable for any damage to or theft of
23 the vessel or its contents, or for damages for loss of use of the
24 vessel resulting from any act or omission in providing assistance
25 other than for acts or omissions constituting gross negligence or
26 willful or wanton misconduct, or for any damages arising from any act
27 or omission committed during the foreclosure process.

28 (14) If a law enforcement officer impounds and secures a vessel
29 pursuant to this section, the impounding officer and the government
30 agency employing the officer are not liable for any damage to or
31 theft of the vessel or its contents, or for damages for loss of use
32 of the vessel, or for any damages arising from any act or omission
33 committed during the foreclosure process.

34 (15) Any legal or registered owner seeking to redeem an impounded
35 vessel under this section has a right to a hearing in the district or
36 municipal court for the jurisdiction in which the vessel was
37 impounded to contest the validity of the impoundment. The district
38 court has jurisdiction to determine the issues involving all
39 impoundments including those authorized by the state or its agents,
40 unless the impoundment was authorized by municipal agents. The

1 municipal court has exclusive jurisdiction to determine the issues
2 involving impoundments authorized by agents of the municipality. Any
3 request for a hearing must be made in writing per the instructions
4 provided on the uniform vessel impound authorization and inventory
5 form and must be received by the appropriate court within ten
6 business days of the date that the vessel impound authorization and
7 inventory form was mailed to or served on the registered or legal
8 owner or owners of the impounded vessel. If the hearing request is
9 not received by the court within ten business days of the sending or
10 personal service of the notice of impoundment pursuant to subsection
11 (9) of this section, the right to a hearing is waived and the
12 registered owner is liable for any towing, storage, or other
13 impoundment charges permitted under this chapter. Upon receipt of a
14 timely hearing request, the court shall proceed to hear and determine
15 the validity of the impoundment.

16 (a) Within five days after the request for a hearing, the court
17 shall notify the operator of the impound facility, the registered and
18 legal owners of the vessel, and the officer or agency authorizing the
19 impound in writing of the hearing date and time.

20 (b) At the hearing, the petitioner may produce any relevant
21 evidence that is admissible under court rules to show that the
22 impoundment, towing, or storage fees charged were not proper. The
23 court may consider a written report made under oath by the officer
24 who authorized the impoundment in lieu of the officer's personal
25 appearance at the hearing.

26 (c) At the conclusion of the hearing, the court shall determine
27 whether the impoundment was proper, whether the towing or storage
28 fees charged were in compliance with the fees established in
29 subsection (10) of this section, and who is responsible for payment
30 of the fees. The court may not adjust fees or charges that are in
31 compliance with subsection (10) of this section.

32 (d) If the impoundment is found proper, the impoundment, towing,
33 and storage fees as permitted under this chapter together with court
34 costs must be assessed against the petitioner.

35 (e) If the impoundment is determined to be in violation of this
36 section, then the registered and legal owners of the vessel bear no
37 impoundment, towing, or storage fees, any security must be returned
38 or discharged as appropriate, and the agency that authorized the
39 impoundment is liable for any towing, storage, or other impoundment
40 fees permitted under this chapter. The court shall enter judgment in

1 favor of the moorage facility or vessel towing contractor against the
2 agency authorizing the impound for the impoundment, towing, and
3 storage fees incurred. In addition, the court shall enter judgment in
4 favor of the petitioner for the amount of the filing fee required by
5 law for the impound hearing petition. If an impoundment is determined
6 to be in violation of this section, the impounding officer and the
7 government agency employing the officer are not liable for damage to
8 or theft of the vessel or its contents, or damages for loss of use of
9 the vessel, if the impounding officer had reasonable suspicion to
10 believe that the operator of the vessel was operating the vessel
11 while under the influence of intoxicating liquor or any drug, was in
12 physical control of the vessel while under the influence of
13 intoxicating liquor or any drug, or was operating the vessel in a
14 reckless manner, or if the impounding officer otherwise acted
15 reasonably under the circumstances in acting to impound and secure
16 the vessel.

17 (f) If any judgment entered under this subsection is not paid
18 within fifteen days of notice in writing of its entry, the court
19 shall award reasonable attorneys' fees and costs against the
20 defendant in any action to enforce the judgment. Notice of entry of
21 judgment may be made by registered or certified mail, and proof of
22 mailing may be made by affidavit of the party mailing the notice.
23 Notice of the entry of the judgment must read essentially as follows:

24 TO:

25 YOU ARE HEREBY NOTIFIED JUDGMENT was
26 entered against you in the Court located at
27 in the sum of \$....., in an action entitled, Case
28 No. YOU ARE FURTHER NOTIFIED that
29 attorneys' fees and costs will be awarded against you
30 under RCW if the judgment is not paid within 15
31 days of the date of this notice.

32 DATED this day of, (year)....

33 Signature

34 Typed name and address of party mailing notice

35 (16) By September 30, 2017, the department of licensing in
36 collaboration with the commission shall create the following forms
37 for use in the enforcement of this section:

1 (a) A vessel impound authorization and inventory form. This form
2 must include sections for the impounding officer to record the
3 addresses of the registered and legal owners of the vessel and the
4 designated individual that will act on behalf of the impound
5 facility; and

6 (b) A forfeited vessel disposition report form.

7 (17) The definitions in this subsection apply throughout this
8 section unless the context clearly requires otherwise.

9 (a) "Impound" means to take and hold a vessel in legal custody.

10 (b) "Legal owner" means a person having a perfected security
11 interest or a registered owner of a vessel unencumbered by a security
12 interest.

13 (c) "Moorage facility" includes a private moorage facility as
14 defined in RCW 88.26.010, a moorage facility as defined in RCW
15 53.08.310, or a moorage facility owned or operated by the agency of
16 the arresting officer.

17 (d) "Registered owner" or "owner" means the person whose lawful
18 right of possession of a vessel has most recently been recorded with
19 the department of licensing.

20 (e) "Secure moorage" is in-water moorage or dry storage at a
21 moorage facility in a location specifically designated for the
22 moorage of vessels and in a location where access is controlled or
23 security is provided.

24 (f) "Vessel" includes any vessel as defined in RCW 79A.60.010 and
25 includes any associated trailer or towing device used to transport
26 the vessel if it is included in the impoundment."

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27 On page 1, line 1 of the title, after "impoundment;" strike the
28 remainder of the title and insert "and adding a new section to
29 chapter 79A.60 RCW."

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