

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2376

Chapter 286, Laws of 2002

57th Legislature
2002 Regular Session

DERELICT VESSELS

EFFECTIVE DATE: 1/1/03

Passed by the House March 12, 2002
Yeas 97 Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate March 7, 2002
Yeas 47 Nays 0

BRAD OWEN
President of the Senate

Approved April 1, 2002

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2376** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

April 1, 2002 - 11:21 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2376

AS AMENDED BY THE SENATE

Passed Legislature - 2002 Regular Session

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 found on or above aquatic lands within the
17 jurisdiction of the authorized public entity. A vessel disposal must
18 be done in an environmentally sound manner and in accordance with all
19 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. For vessels not at
34 a moorage facility, an authorized public entity with jurisdiction over
35 the aquatic lands where the vessel is located may, at its discretion,
36 request to assume primary responsibility for that particular vessel
37 from the owner of the aquatic lands where the vessel is located.

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

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

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

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

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

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

33 (3) If a vessel is in immediate danger of sinking, breaking up, or
34 blocking navigational channels, and the owner of the vessel cannot be
35 located or is unwilling to assume responsibility for the vessel, an
36 authorized public entity may tow, beach, or otherwise take temporary
37 possession of the vessel. Before taking temporary possession of the
38 vessel, the authorized public entity must make reasonable attempts to

1 consult with the department and the United States coast guard to ensure
2 that other remedies are not available. The basis for taking temporary
3 possession of the vessel must be set out in writing by the authorized
4 public entity within seven days of taking action and be submitted to
5 the owner, if known, as soon thereafter as is reasonable. Immediately
6 after taking possession of the vessel, the authorized public entity
7 must initiate the notice provisions in subsection (1) of this section.
8 The authorized public entity must complete the notice requirements of
9 subsection (1) of this section before using or disposing of the vessel
10 as authorized in section 6 of this act.

11 NEW SECTION. **Sec. 6.** (1) After taking custody of a vessel, the
12 authorized public entity may use or dispose of the vessel in any
13 appropriate and environmentally sound manner without further notice to
14 any owners, but must give preference to uses that derive some monetary
15 benefit from the vessel, either in whole or in scrap. If no value can
16 be derived from the vessel, the authorized public entity must give
17 preference to the least costly, environmentally sound, reasonable
18 disposal option. Any disposal operations must be consistent with the
19 state solid waste disposal provisions provided for in chapter 70.95
20 RCW.

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

25 (3) Proceeds derived from the sale of the vessel must first be
26 applied to any administrative costs that are incurred by the authorized
27 public entity during the notification procedures set forth in section
28 5 of this act, removal and disposal costs, and costs associated with
29 environmental damages directly or indirectly caused by the vessel. If
30 the proceeds derived from the vessel exceed all administrative costs,
31 removal and disposal costs, and costs associated with environmental
32 damages directly or indirectly caused by the vessel, the remaining
33 moneys must be applied to satisfying any liens registered against the
34 vessel.

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

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

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

13 (3) If the full amount of all costs due to the authorized public
14 entity under this chapter is not paid to the authorized public entity
15 within thirty days after first notifying the responsible parties of the
16 amounts owed, the authorized public entity or the department may bring
17 an action in any court of competent jurisdiction to recover the costs,
18 plus reasonable attorneys' fees and costs incurred by the authorized
19 public entity.

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

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

28 NEW SECTION. **Sec. 10.** A person seeking to redeem a vessel that is
29 in the custody of an authorized public entity may commence a lawsuit to
30 contest the authorized public entity's decision to take custody of the
31 vessel or to contest the amount of reimbursement owed. The lawsuit
32 must be commenced in the superior court of the county in which the
33 vessel existed when custody was taken by the authorized public entity.
34 The lawsuit must be commenced within twenty days of the date the
35 authorized public entity took custody of the vessel under section 5 of
36 this act, or the right to a hearing is deemed waived and the vessel's

1 owner is liable for any costs owed the authorized public entity. In
2 the event of litigation, the prevailing party is entitled to reasonable
3 attorneys' fees and costs.

4 NEW SECTION. **Sec. 11.** (1) The derelict vessel removal account is
5 created in the state treasury. All receipts from sections 6 and 7 of
6 this act and those moneys specified in RCW 88.02.030 and 88.02.050 must
7 be deposited into the account. Moneys in the account may only be spent
8 after appropriation. Expenditures from the account shall be used by
9 the department to reimburse authorized public entities for seventy-five
10 percent of the total reasonable and auditable administrative, removal,
11 disposal, and environmental damage costs of abandoned or derelict
12 vessels when the previous owner is either unknown after a reasonable
13 search effort or insolvent. During the 2001-2003 biennium, up to forty
14 percent of the expenditures from the account may be used for
15 administrative expenses of the department of licensing and department
16 of natural resources in implementing this chapter. In each subsequent
17 biennium, up to twenty percent of the expenditures from the account may
18 be used for administrative expenses of the department of licensing and
19 department of natural resources in implementing this chapter.

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

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

34 (4) The department must keep all authorized public entities
35 apprized of the balance of the derelict vessel removal account and the
36 funds available for reimbursement. The guidelines developed by the
37 department must also be made available to the other authorized public
38 entities. This subsection (4) must be satisfied by utilizing the least

1 costly method, including maintaining the information on the
2 department's internet web site, or any other cost-effective method.

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

7 (6) This chapter does not guarantee reimbursement for an authorized
8 public entity. Authorized public entities seeking certainty in
9 reimbursement prior to taking action under this chapter may first
10 notify the department of their proposed action and the estimated total
11 costs. Upon notification by an authorized public entity, the
12 department must make the authorized public entity aware of the status
13 of the fund and the likelihood of reimbursement being available. The
14 department may offer technical assistance and assure reimbursement for
15 up to two years following the removal action if an assurance is
16 appropriate given the balance of the fund and the details of the
17 proposed action.

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

20 Vessel registration is required under this chapter except for the
21 following:

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

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

26 (3) Vessels either (a) registered or numbered under the laws of a
27 country other than the United States; or (b) having a valid United
28 States customs service cruising license issued pursuant to 19 C.F.R.
29 Sec. 4.94. On or before the sixty-first day of use in the state, any
30 vessel in the state under this subsection shall obtain an
31 identification document from the department of licensing, its agents,
32 or subagents indicating when the vessel first came into the state. At
33 the time of any issuance of an identification document, a (~~twenty-~~
34 ~~five~~) thirty dollar identification document fee shall be paid by the
35 vessel owner to the department of licensing for the cost of providing
36 the identification document by the department of licensing. Five
37 dollars from each such transaction must be deposited in the derelict
38 vessel removal account created in section 11 of this act. Any moneys

1 remaining from the fee after the payment of costs and the deposit to
2 the derelict vessel removal account shall be allocated to counties by
3 the state treasurer for approved boating safety programs under RCW
4 88.02.045. The department of licensing shall adopt rules to implement
5 its duties under this subsection, including issuing and displaying the
6 identification document and collecting the (~~twenty-five~~) thirty
7 dollar fee;

8 (4) Vessels that have been issued a valid number under federal law
9 or by an approved issuing authority of the state of principal
10 operation. However, a vessel that is validly registered in another
11 state but that is removed to this state for principal use is subject to
12 registration under this chapter. The issuing authority for this state
13 shall recognize the validity of the numbers previously issued for a
14 period of sixty days after arrival in this state;

15 (5) Vessels owned by a nonresident if the vessel is located upon
16 the waters of this state exclusively for repairs, alteration, or
17 reconstruction, or any testing related to the repair, alteration, or
18 reconstruction conducted in this state if an employee of the repair,
19 alteration, or construction facility is on board the vessel during any
20 testing(~~(:—PROVIDED, That))~~). However, any vessel owned by a
21 nonresident is located upon the waters of this state exclusively for
22 repairs, alteration, reconstruction, or testing for a period longer
23 than sixty days, that the nonresident shall file an affidavit with the
24 department of revenue verifying the vessel is located upon the waters
25 of this state for repair, alteration, reconstruction, or testing and
26 shall continue to file such affidavit every sixty days thereafter,
27 while the vessel is located upon the waters of this state exclusively
28 for repairs, alteration, reconstruction, or testing;

29 (6) Vessels equipped with propulsion machinery of less than ten
30 horsepower that:

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

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

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

37 (7) Vessels under sixteen feet in overall length which have no
38 propulsion machinery of any type or which are not used on waters
39 subject to the jurisdiction of the United States or on the high seas

1 beyond the territorial seas for vessels owned in the United States and
2 are powered by propulsion machinery of ten or less horsepower;

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

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

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

14 (11) On and after January 1, 1998, vessels owned by a nonresident
15 individual brought into the state for his or her use or enjoyment while
16 temporarily within the state for not more than six months in any
17 continuous twelve-month period, unless the vessel is used in conducting
18 a nontransitory business activity within the state. However, the
19 vessel must have been issued a valid number under federal law or by an
20 approved issuing authority of the state of principal operation. On or
21 before the sixty-first day of use in the state, any vessel temporarily
22 in the state under this subsection shall obtain an identification
23 document from the department of licensing, its agents, or subagents
24 indicating when the vessel first came into the state. An
25 identification document shall be valid for a period of two months. At
26 the time of any issuance of an identification document, a twenty-five
27 dollar identification document fee shall be paid by the vessel owner to
28 the department of licensing for the cost of providing the
29 identification document by the department of licensing. Any moneys
30 remaining from the fee after payment of costs shall be allocated to
31 counties by the state treasurer for approved boating safety programs
32 under RCW 88.02.045. The department of licensing shall adopt rules to
33 implement its duties under this subsection, including issuing and
34 displaying the identification document and collecting the twenty-five
35 dollar fee.

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

1 Application for a vessel registration shall be made to the
2 department or its authorized agent in the manner and upon forms
3 prescribed by the department. The application shall state the name and
4 address of each owner of the vessel and such other information as may
5 be required by the department, shall be signed by at least one owner,
6 and shall be accompanied by a vessel registration fee of ten dollars
7 and fifty cents per year and the excise tax imposed under chapter 82.49
8 RCW. In addition, two additional dollars must be collected annually
9 from every vessel registration application. These moneys must be
10 deposited into the derelict vessel removal account established in
11 section 11 of this act. If the department of natural resources
12 indicates that the balance of the derelict vessel removal account
13 reaches one million dollars as of March 1st of any year, the collection
14 of the two-dollar fee must be suspended for the following fiscal year.
15 Any fees required for licensing agents under RCW 46.01.140 shall be in
16 addition to the ten dollar and fifty cent annual registration fee and
17 the two-dollar derelict vessel fee.

18 Upon receipt of the application and the registration fee, the
19 department shall assign a registration number and issue a decal for
20 each vessel. The registration number and decal shall be issued and
21 affixed to the vessel in a manner prescribed by the department
22 consistent with the standard numbering system for vessels set forth in
23 volume 33, part 174, of the code of federal regulations. A valid decal
24 affixed as prescribed shall indicate compliance with the annual
25 registration requirements of this chapter.

26 The vessel registrations and decals are valid for a period of one
27 year, except that the director of licensing may extend or diminish
28 vessel registration periods, and the decals therefor, for the purpose
29 of staggered renewal periods. For registration periods of more or less
30 than one year, the department may collect prorated annual registration
31 fees and excise taxes based upon the number of months in the
32 registration period. Vessel registrations are renewable every year in
33 a manner prescribed by the department upon payment of the vessel
34 registration fee ((and)), excise tax, and the derelict vessel fee.
35 Upon renewing a vessel registration, the department shall issue a new
36 decal to be affixed as prescribed by the department.

37 When the department issues either a notice to renew a vessel
38 registration or a decal for a new or renewed vessel registration, it
39 shall also provide information on the location of marine oil recycling

1 tanks and sewage holding tank pumping stations. This information will
2 be provided to the department by the state parks and recreation
3 commission in a form ready for distribution. The form will be
4 developed and prepared by the state parks and recreation commission
5 with the cooperation of the department of ecology. The department, the
6 state parks and recreation commission, and the department of ecology
7 shall enter into a memorandum of agreement to implement this process.

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

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

15 The department shall provide for the issuance of vessel
16 registrations and may appoint agents for collecting fees and issuing
17 registration numbers and decals. General fees for vessel registrations
18 collected by the director shall be deposited in the general fund:
19 PROVIDED, That any amount above one million one hundred thousand
20 dollars per fiscal year shall be allocated to counties by the state
21 treasurer for boating safety/education and law enforcement programs and
22 the fee collected specifically for the removal and disposal of derelict
23 vessels must be deposited in the derelict vessel removal account
24 created in section 11 of this act. Eligibility for ((such)) boating
25 safety/education and law enforcement program allocations shall be
26 contingent upon approval of the local boating safety program by the
27 state parks and recreation commission. Fund allocation shall be based
28 on the numbers of registered vessels by county of moorage. Each
29 benefitting county shall be responsible for equitable distribution of
30 such allocation to other jurisdictions with approved boating safety
31 programs within said county. Any fees not allocated to counties due to
32 the absence of an approved boating safety program, shall be allocated
33 to the commission for awards to local governments to offset law
34 enforcement and boating safety impacts of boaters recreating in
35 jurisdictions other than where registered.

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

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

7 NEW SECTION. **Sec. 16.** A new section is added to chapter 35A.21
8 RCW to read as follows:

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

14 NEW SECTION. **Sec. 17.** A new section is added to chapter 36.32 RCW
15 to read as follows:

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

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

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

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

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

1 privately owned aquatic lands within the jurisdiction of the
2 department.

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

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 (1) "Charges" means charges of the commission for moorage and
8 storage, and all other charges related to the vessel and owing to or
9 that become owing to the commission, including but not limited to costs
10 of securing, disposing, or removing vessels, damages to any commission
11 facility, and any costs of sale and related legal expenses for
12 implementing RCW 79A.65.020 and 79A.65.030.

13 (2) "Commission" means the Washington state parks and recreation
14 commission.

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

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

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

25 (6)(a) "Registered owner" means any person that is either: (i)
26 Shown as the owner in a vessel certificate of documentation issued by
27 the secretary of the United States department of transportation under
28 46 U.S.C. Sec. 12103; or (ii) the registered owner or legal owner of a
29 vessel for which a certificate of title has been issued under chapter
30 88.02 RCW; or (iii) the owner of a vessel registered under the vessel
31 registration laws of another state under which laws the commission can
32 readily identify the ownership of vessels registered with that state.

33 (b) "Registered owner" also includes: (i) Any holder of a security
34 interest or lien recorded with the United States department of
35 transportation with respect to a vessel on which a certificate of
36 documentation has been issued; (ii) any holder of a security interest
37 identified in a certificate of title for a vessel registered under
38 chapter 88.02 RCW; or (iii) any holder of a security interest in a

1 vessel where the holder is identified in vessel registration
2 information of a state with vessel registration laws that fall within
3 (a)(iii) of this subsection and under which laws the commission can
4 readily determine the identity of the holder.

5 (c) "Registered owner" does not include any vessel owner or holder
6 of a lien or security interest in a vessel if the vessel does not have
7 visible information affixed to it (such as name and hailing port or
8 registration numbers) that will enable the commission to obtain
9 ownership information for the vessel without incurring unreasonable
10 expense.

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

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

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

18 (10) "Vessel" means every watercraft or part thereof constructed,
19 used, or capable of being used as a means of transportation on the
20 water. It includes any equipment or personal property on the vessel
21 that is used or capable of being used for the operation, navigation, or
22 maintenance of the vessel.

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

25 (1) The commission may take reasonable measures, including but not
26 limited to the use of anchors, chains, ropes, and locks, or removal
27 from the water, to secure unauthorized vessels located at or on a
28 commission facility so that the unauthorized vessels are in the
29 possession and control of the commission. At least ten days before
30 securing any unauthorized registered vessel, the commission shall send
31 notification by registered mail to the last registered owner or
32 registered owners of the vessel at their last known address or
33 addresses.

34 (2) The commission may take reasonable measures, including but not
35 limited to the use of anchors, chains, ropes, locks, or removal from
36 the water, to secure any vessel if the vessel, in the opinion of the
37 commission, is a nuisance, is in danger of sinking or creating other
38 damage to a commission facility, or is otherwise a threat to the

1 health, safety, or welfare of the public or environment at a commission
2 facility. The costs of any such procedure shall be paid by the
3 vessel's owner.

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

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

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

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

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

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

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

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

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

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

1 (7) If the owner or owners of a vessel are unable to reimburse the
2 commission for all reasonable charges under subsections (1) and (2) of
3 this section within a reasonable time, the commission may seek
4 reimbursement of seventy-five percent of all reasonable and auditable
5 costs from the derelict vessel removal account established in section
6 11 of this act.

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

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

14 (2) Before a vessel is sold, the commission shall make a reasonable
15 effort to provide notice of sale, at least twenty days before the day
16 of the sale, to each registered owner of a registered vessel and each
17 owner of an unregistered vessel. The notice shall contain the time and
18 place of the sale, a reasonable description of the vessel to be sold,
19 and the amount of charges then owing with respect to the vessel, and a
20 summary of the rights and procedures under this chapter. A notice of
21 sale shall be published at least once, more than ten but not more than
22 twenty days before the sale, in a newspaper of general circulation in
23 the county in which the commission facility is located. This notice
24 shall include: (a) If known, the name of the vessel and the last owner
25 and the owner's address; and (b) a reasonable description of the
26 vessel. The commission may bid all or part of its charges at the sale
27 and may become a purchaser at the sale.

28 (3) Before a vessel is sold, any person seeking to redeem a secured
29 vessel may commence a lawsuit in the superior court for the county in
30 which the vessel was secured to contest the commission's decision to
31 secure the vessel or the amount of charges owing. This lawsuit shall
32 be commenced within fifteen days of the date the notification was
33 posted under RCW 79A.65.020(3), or the right to a hearing is deemed
34 waived and the owner is liable for any charges owing the commission.
35 In the event of litigation, the prevailing party is entitled to
36 reasonable attorneys' fees and costs.

37 (4) The proceeds of a sale under this section shall be applied
38 first to the payment of the amount of the reasonable charges incurred

1 by the commission and moorage fees owed to the commission, then to the
2 owner or to satisfy any liens of record or security interests of record
3 on the vessel in the order of their priority. If an owner cannot in
4 the exercise of due diligence be located by the commission within one
5 year of the date of the sale, any excess funds from the sale, following
6 the satisfaction of any bona fide security interest, shall revert to
7 the ((department of revenue under chapter 63.29 RCW)) derelict vessel
8 removal account established in section 11 of this act. If the sale is
9 for a sum less than the applicable charges, the commission is entitled
10 to assert a claim for the deficiency against the vessel owner. Nothing
11 in this section prevents any lien holder or secured party from
12 asserting a claim for any deficiency owed the lien holder or secured
13 party.

14 (5) If no one purchases the vessel at a sale, the commission may
15 proceed to properly dispose of the vessel in any way the commission
16 considers appropriate, including, but not limited to, destruction of
17 the vessel or by negotiated sale. The commission may assert a claim
18 against the owner for any charges incurred thereby. If the vessel, or
19 any part of the vessel, or any rights to the vessel, are sold under
20 this subsection, any proceeds from the sale shall be distributed in the
21 manner provided in subsection (4) of this section.

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

24 A moorage facility operator may adopt all ((regulations)) rules
25 necessary for rental and use of moorage facilities and for the
26 expeditious collection of port charges. The ((regulations)) rules may
27 also establish procedures for the enforcement of these ((regulations))
28 rules by port district, city, county, metropolitan park district or
29 town personnel. The ((regulations)) rules shall include the following:

30 (1) Procedures authorizing moorage facility personnel to take
31 reasonable measures, including the use of chains, ropes, and locks, or
32 removal from the water, to secure vessels within the moorage facility
33 so that the vessels are in the possession and control of the moorage
34 facility operator and cannot be removed from the moorage facility.
35 These procedures may be used if an owner mooring or storing a vessel at
36 the moorage facility fails, after being notified that charges are owing
37 and of the owner's right to commence legal proceedings to contest that
38 such charges are owing, to pay the port charges owed or to commence

1 legal proceedings. Notification shall be by registered mail to the
2 owner at his or her last known address. In the case of a transient
3 vessel, or where no address was furnished by the owner, the moorage
4 facility operator need not give such notice prior to securing the
5 vessel. At the time of securing the vessel, an authorized moorage
6 facility employee shall attach to the vessel a readily visible notice.
7 The notice shall be of a reasonable size and shall contain the
8 following information:

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

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

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

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

18 (2) Procedures authorizing moorage facility personnel at their
19 discretion to move moored vessels ashore for storage within properties
20 under the operator's control or for storage with private persons under
21 their control as bailees of the moorage facility, if the vessel is, in
22 the opinion of port personnel a nuisance, if the vessel is in danger of
23 sinking or creating other damage, or is owing port charges. Costs of
24 any such procedure shall be paid by the vessel's owner. If the owner
25 is not known, or unable to reimburse the moorage facility operator for
26 the costs of these procedures, the mooring facility operators may seek
27 reimbursement of seventy-five percent of all reasonable and auditable
28 costs from the derelict vessel removal account established in section
29 11 of this act.

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

34 (a) Making arrangements satisfactory with the moorage facility
35 operator for the immediate removal of the vessel from the moorage
36 facility or for authorized moorage; and

37 (b) Making payment to the moorage facility operator of all port
38 charges, or by posting with the moorage facility operator a sufficient
39 cash bond or other acceptable security, to be held in trust by the

1 moorage facility operator pending written agreement of the parties with
2 respect to payment by the vessel owner of the amount owing, or pending
3 resolution of the matter of the charges in a civil action in a court of
4 competent jurisdiction. After entry of judgment, including any
5 appeals, in a court of competent jurisdiction, or after the parties
6 reach agreement with respect to payment, the trust shall terminate and
7 the moorage facility operator shall receive so much of the bond or
8 other security as is agreed, or as is necessary to satisfy any
9 judgment, costs, and interest as may be awarded to the moorage facility
10 operator. The balance shall be refunded immediately to the owner at
11 his or her last known address.

12 (4) If a vessel has been secured by the moorage facility operator
13 under subsection (1) of this section and is not released to the owner
14 under the bonding provisions of this section within ninety days after
15 notifying or attempting to notify the owner under subsection (1) of
16 this section, the vessel shall be conclusively presumed to have been
17 abandoned by the owner.

18 (5) If a vessel moored or stored at a moorage facility is
19 abandoned, the moorage facility operator may, by resolution of its
20 legislative authority, authorize the public sale of the vessel by
21 authorized personnel to the highest and best bidder for cash as
22 ~~((follows:))~~ prescribed by this subsection (5). Either a minimum bid
23 may be established or a letter of credit may be required, or both, to
24 discourage the future reabandonment of the vessel.

25 (a) Before the vessel is sold, the owner of the vessel shall be
26 given at least twenty days' notice of the sale in the manner set forth
27 in subsection (1) of this section if the name and address of the owner
28 is known. The notice shall contain the time and place of the sale, a
29 reasonable description of the vessel to be sold, and the amount of port
30 charges owed with respect to the vessel. The notice of sale shall be
31 published at least once, more than ten but not more than twenty days
32 before the sale, in a newspaper of general circulation in the county in
33 which the moorage facility is located. Such notice shall include the
34 name of the vessel, if any, the last known owner and address, and a
35 reasonable description of the vessel to be sold. The moorage facility
36 operator may bid all or part of its port charges at the sale and may
37 become a purchaser at the sale~~((+))~~.

38 (b) Before the vessel is sold, any person seeking to redeem an
39 impounded vessel under this section may commence a lawsuit in the

1 superior court for the county in which the vessel was impounded to
2 contest the validity of the impoundment or the amount of the port
3 charges owing. Such lawsuit must be commenced within ten days of the
4 date the notification was provided pursuant to subsection (1) of this
5 section, or the right to a hearing shall be deemed waived and the owner
6 shall be liable for any port charges owing the moorage facility
7 operator. In the event of litigation, the prevailing party shall be
8 entitled to reasonable attorneys' fees and costs.

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

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

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

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

28 NEW SECTION. **Sec. 25.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

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

Passed the House March 12, 2002.

Passed the Senate March 7, 2002.

Approved by the Governor April 1, 2002.

Filed in Office of Secretary of State April 1, 2002.