

2SHB 2457 - S AMD 619

By Senators Pearson, Lias

ADOPTED 03/07/2014

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

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds that section 45,
4 chapter 291, Laws of 2013 required the department of natural resources,
5 in consultation with the department of ecology, to evaluate potential
6 changes to laws and rules related to derelict and abandoned vessels
7 that increase vessel owner responsibility and address challenges
8 associated with the economics of removing vessels from the water.

9 (2) The legislature further finds that, during the 2013 legislative
10 interim, the two responsible agencies engaged in a thorough process to
11 satisfy their legislative charge. This process involved exhausting in-
12 state expertise on various topics and reaching out to experts in vessel
13 deconstruction, surety bonding, letters of credit, marine insurance,
14 taxation, federal regulation, similar programs in other states, and
15 more. The process also involved two open invitation public meetings.

16 (3) The legislature further finds that a significant number of
17 various and competing options were discussed, analyzed, and ultimately
18 dismissed during the process undertaken by the two agencies. It is the
19 intent of the legislature to capture the recommendations for meeting
20 the goals of increased vessel owner responsibility and addressing the
21 challenges associated with the economics of removing vessels from the
22 water that rose to the top from the process undertaken by the agencies.

23 (4) It is the further intent of the legislature that this act serve
24 as the final report due by the department of natural resources under
25 section 45, chapter 291, Laws of 2013.

26 **Part One--Vessel Owner Responsibility**

27 NEW SECTION. **Sec. 101.** A new section is added to chapter 79.100
28 RCW to read as follows:

1 (1) Any individual or company that purchases or otherwise receives
2 a used vessel greater than sixty-five feet in length and more than
3 forty years old must, prior to or concurrent with the transfer of
4 ownership, secure a marine insurance policy consistent with this
5 section. Proof of the marine insurance policy must be provided to:

6 (a) The transferor of the vessel upon purchase or other transfer;
7 and

8 (b) If applicable, the department of licensing upon registration or
9 the department of revenue upon the payment of any taxes.

10 (2) The transferor of a vessel greater than sixty-five feet in
11 length and more than forty years old has an affirmative duty to ensure
12 that any potential transferee has secured a marine insurance policy
13 consistent with this section prior to or concurrent with the
14 finalization of any sale or transfer. Nothing in this section
15 prohibits the sale or other transfer of a vessel greater than sixty-
16 five feet in length and more than forty years old to a transferee that
17 fails to secure a marine insurance policy. However, a transferor that
18 chooses to finalize a sale or other transfer with a transferee not in
19 possession of a marine insurance policy assumes secondary liability for
20 the vessel consistent with RCW 79.100.060 if the vessel is later
21 abandoned by the transferee or becomes derelict prior to a subsequent
22 ownership transfer.

23 (3) The marine insurance policy required under this section must be
24 secured by the transferee prior to, or concurrent with, assuming
25 ownership of a vessel greater than sixty-five feet in length and more
26 than forty years old. The marine insurance policy must satisfy the
27 following conditions:

28 (a) Have a term of at least twelve months following the
29 transferee's assumption of vessel ownership;

30 (b) Provide coverage of an amount that is, unless otherwise
31 provided by the department by rule, at least three hundred thousand
32 dollars;

33 (c) Provide, unless otherwise provided by the department by rule,
34 coverage for the removal of the vessel if it should sink and coverage
35 should it cause a pollution event.

36 (4) The purchaser of marine insurance under this section may
37 satisfy the requirements of this section through the purchase of
38 multiple policies as necessary.

1 (5) The department may, by rule, provide for a purchaser of a
2 vessel to also satisfy the insurance requirements of this section
3 through the posting of adequate security with a financial institution.

4 (6) A person required to secure marine insurance or show proof of
5 marine insurance under this section who either: (a) Fails to secure a
6 marine insurance policy consistent with this section prior to or
7 concurrent with the transfer of ownership, unless the vessel was sold
8 consistent with RCW 79.100.150(2)(b); or (b) cancels a marine insurance
9 policy consistent with this section prior to the end of the twelfth
10 month of vessel ownership or to a subsequent transfer of ownership,
11 whichever occurs first, without securing another marine insurance
12 policy consistent with this section in its place, is guilty of a
13 misdemeanor. The department may contact any vessel owner required by
14 this section to have a marine insurance policy to ensure compliance
15 with this section.

16 **Sec. 102.** RCW 79.100.150 and 2013 c 291 s 38 are each amended to
17 read as follows:

18 (1) A vessel owner must obtain a vessel inspection under this
19 section prior to transferring a vessel that is:

20 (a) More than sixty-five feet in length and more than forty years
21 old; and

22 (b) Either:

23 (i) Is registered or required to be registered under chapter 88.02
24 RCW; or

25 (ii) Is listed or required to be listed under chapter 84.40 RCW.

26 (2) If the vessel inspection determines the vessel is not seaworthy
27 and the value of the vessel is less than the anticipated costs required
28 to return the vessel to seaworthiness, then the vessel owner may not
29 sell or transfer ownership of the vessel unless:

30 (a) The vessel is repaired to a seaworthy state prior to the
31 transfer of ownership; or

32 (b) The vessel is sold for scrap, restoration, salvage, or another
33 use that will remove the vessel from state waters to a person
34 displaying a business license issued under RCW 19.02.070 that a
35 reasonable person in the seller's position would believe has the
36 capability and intent to do based on factors that may include the
37 buyer's facilities, resources, documented intent, and relevant history.

1 (3) Where required under subsection (1) of this section, a vessel
2 owner must provide a copy of the vessel inspection documentation to the
3 transferee and, if the department did not conduct the inspection, to
4 the department prior to the transfer.

5 ~~((3))~~ (4) Unless rules adopted by the department provide
6 otherwise, the vessel inspection required under this section must be
7 contained in a formal marine survey conducted by a third party to the
8 transaction. The survey must include, at a minimum, a conclusion
9 relating to the seaworthiness of the vessel, an estimate of the
10 vessel's fair market value, and, if applicable, an estimate as to the
11 anticipated cost of repairs necessary to return the vessel to
12 seaworthiness.

13 (5) The department may, by rule, allow other forms of vessel
14 condition determinations, such as United States coast guard
15 certificates of inspection, to replace the requirements for a formal
16 marine survey under this section.

17 (6) Failure to comply with the requirements of ~~((subsections (1)~~
18 ~~and (2) of))~~ this section will result in the transferor having
19 secondary liability under RCW 79.100.060 if the vessel is later
20 abandoned by the transferee or becomes derelict prior to a subsequent
21 ownership transfer.

22 (7) Nothing in this section prevents a vessel owner from removing,
23 dismantling, and lawfully disposing of any vessel lawfully under the
24 vessel owner's control.

25 **Part Two--Authorities and Requirements Applicable to Marinas**

26 **Sec. 201.** RCW 79.100.130 and 2013 c 291 s 4 are each amended to
27 read as follows:

28 (1) A private moorage facility owner, as those terms are defined in
29 RCW 88.26.010, may contract with the department or a local government
30 for the purpose of participating in the derelict vessel removal
31 program.

32 (2) If a contract is completed under this section, the department
33 or local government shall serve as the authorized public entity for the
34 removal of a derelict or abandoned vessel from the property of the
35 private moorage facility owner. The contract must provide for the
36 private moorage facility owner to be financially responsible for the

1 removal and disposal costs that are not reimbursed by the department as
2 provided under RCW 79.100.100, and any additional reasonable
3 administrative costs incurred by the department or local government
4 during the removal of the derelict or abandoned vessel.

5 (3) Prior to the commencement of any removal (~~(which)~~) under this
6 section for which a local government serves as the authorized public
7 entity and that will seek reimbursement from the derelict vessel
8 removal program, the contract and the proposed vessel removal shall be
9 submitted to the department for review and approval. The local
10 government shall use the procedure specified under RCW
11 79.100.100(~~(+6)~~)).

12 (4) If the private moorage facility owner has already seized the
13 vessel under chapter 88.26 RCW and title has reverted to the moorage
14 facility, the moorage facility is not considered the owner under this
15 chapter for purposes of cost recovery for actions taken under this
16 section.

17 (5)(a) The department and all local governments have discretion as
18 to whether to enter into contracts to serve as the authorized public
19 entity under this section for vessels located at a private moorage
20 facility.

21 (b) The department may not enter into a contract to serve as the
22 authorized public entity under this section for vessels located at a
23 private moorage facility if the private moorage facility is not in
24 compliance with the mandatory insurance requirements of section 202 of
25 this act.

26 NEW SECTION. Sec. 202. A new section is added to chapter 88.26
27 RCW to read as follows:

28 (1) Every private moorage facility operator must:

29 (a) Obtain and maintain insurance coverage for the private moorage
30 facility;

31 (b) Require, as a condition of moorage, all vessels other than
32 transient vessels to provide proof of marine insurance to the moorage
33 facility.

34 (2) Unless rules adopted by the department of natural resources
35 require otherwise, insurance maintained by private moorage facility
36 operators and required of moored vessels must:

1 (a) Provide coverage at liability limits of at least three hundred
2 thousand dollars per occurrence; and

3 (b) Include, at a minimum, general, legal, and pollution liability
4 coverage.

5 (3) The purchaser of marine insurance under this section may
6 satisfy the requirements of this section through the purchase of
7 multiple policies as necessary.

8 (4) The requirement under this section for private moorage facility
9 operators to require proof of marine insurance from mooring vessels
10 applies whenever a private moorage facility operator enters an initial
11 or renewal moorage agreement after the effective date of this section.
12 The private moorage facility operator is not required to verify
13 independently whether a mooring vessel's insurance policy meets the
14 requirements of this section and is not responsible for any change in
15 insurance coverage applicable to the vessel that occurs after the
16 initial agreement is entered into or in the time period between
17 agreement renewals.

18 (5) Any private moorage facility operator who fails to satisfy the
19 requirements of this section incurs secondary liability under RCW
20 79.100.060 for any vessel located at the private moorage facility that
21 meets the definition of derelict vessel or abandoned vessel as those
22 terms are defined in RCW 79.100.010.

23 NEW SECTION. **Sec. 203.** A new section is added to chapter 53.08
24 RCW to read as follows:

25 (1) Every moorage facility operator must:

26 (a) Obtain and maintain insurance coverage for the moorage
27 facility;

28 (b) Require, as a condition of moorage, all vessels other than
29 transient vessels to provide proof of marine insurance to the moorage
30 facility.

31 (2) Unless rules adopted by the department of natural resources
32 require otherwise, insurance maintained by moorage facility operators
33 and required of moored vessels must:

34 (a) Provide coverage at liability limits of at least three hundred
35 thousand dollars per occurrence; and

36 (b) Include, at a minimum, general, legal, and pollution liability
37 coverage.

1 (3) The purchaser of marine insurance under this section may
2 satisfy the requirements of this section through the purchase of
3 multiple policies as necessary.

4 (4) The requirement under this section for moorage facility
5 operators to require proof of marine insurance from mooring vessels
6 applies whenever a moorage facility operator enters an initial or
7 renewal moorage agreement after the effective date of this section.
8 The moorage facility operator is not required to verify independently
9 whether a mooring vessel's insurance policy meets the requirements of
10 this section and is not responsible for any change in insurance
11 coverage applicable to the vessel that occurs after the initial
12 agreement is entered into or in the time period between agreement
13 renewals.

14 (5) Any moorage facility operator that the department has
15 determined has failed to satisfy the requirements of this section is
16 not eligible for reimbursement from the derelict vessel removal account
17 under RCW 79.100.100.

18 **Sec. 204.** RCW 88.26.010 and 1993 c 474 s 1 are each amended to
19 read as follows:

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

22 (1) "Charges" means charges of a private moorage facility operator
23 for moorage and storage, all other charges owing to or that become
24 owing under a contract between a vessel owner and the private moorage
25 facility operator, or any costs of sale and related legal expenses for
26 implementing RCW 88.26.020.

27 (2) "Vessel" means every watercraft used or capable of being used
28 as a means of transportation on the water. "Vessel" includes any
29 trailer used for the transportation of watercraft.

30 (3) "Private moorage facility" means any properties or facilities
31 owned or operated by a private moorage facility operator that are
32 capable of use for the moorage or storage of vessels.

33 (4) "Private moorage facility operator" means every natural person,
34 firm, partnership, corporation, association, organization, or any other
35 legal entity, employee, or their agent, that owns or operates a private
36 moorage facility. Private moorage facility operation does not include
37 a "moorage facility operator" as defined in RCW 53.08.310.

1 (5) "Owner" means every natural person, firm, partnership,
2 corporation, association, or organization, or their agent, with actual
3 or apparent authority, who expressly or impliedly contracts for use of
4 a moorage facility.

5 (6) "Transient vessel" means a vessel using a private moorage
6 facility and that belongs to an owner who does not have a moorage
7 agreement with the private moorage facility operator. Transient
8 vessels include, but are not limited to, vessels seeking a harbor or
9 refuge, day use, or overnight use of a private moorage facility on a
10 space-as-available basis. Transient vessels may also include vessels
11 taken into custody under RCW 79.100.040.

12 **Sec. 205.** RCW 53.08.310 and 1986 c 260 s 1 are each amended to
13 read as follows:

14 Unless the context clearly requires otherwise, the definitions in
15 this section apply throughout this section, section 203 of this act,
16 and RCW 53.08.320.

17 (1) "Port charges" mean charges of a moorage facility operator for
18 moorage and storage, and all other charges owing or to become owing
19 under a contract between a vessel owner and the moorage facility
20 operator, or under an officially adopted tariff including, but not
21 limited to, costs of sale and related legal expenses.

22 (2) "Vessel" means every species of watercraft or other artificial
23 contrivance capable of being used as a means of transportation on water
24 and which does not exceed two hundred feet in length. "Vessel"
25 includes any trailer used for the transportation of watercraft.

26 (3) "Moorage facility" means any properties or facilities owned or
27 operated by a moorage facility operator which are capable of use for
28 the moorage or storage of vessels.

29 (4) "Moorage facility operator" means any port district, city,
30 town, metropolitan park district, or county which owns and/or operates
31 a moorage facility.

32 (5) "Owner" means every natural person, firm, partnership,
33 corporation, association, or organization, or agent thereof, with
34 actual or apparent authority, who expressly or impliedly contracts for
35 use of a moorage facility.

36 (6) "Transient vessel" means a vessel using a moorage facility and
37 which belongs to an owner who does not have a moorage agreement with

1 the moorage facility operator. Transient vessels include, but are not
2 limited to: Vessels seeking a harbor of refuge, day use, or overnight
3 use of a moorage facility on a space-as-available basis. Transient
4 vessels may also include vessels taken into custody under RCW
5 79.100.040.

6 **Part Three--Encouraging Vessel Removal and Deconstruction**

7 NEW SECTION. **Sec. 301.** A new section is added to chapter 82.08
8 RCW to read as follows:

9 (1) The tax levied by RCW 82.08.020 does not apply to sales of
10 vessel deconstruction performed at:

11 (a) A qualified vessel deconstruction facility; or

12 (b) An area over water that has been permitted under section 402 of
13 the clean water act of 1972 (33 U.S.C. Sec. 1342) for vessel
14 deconstruction.

15 (2) The definitions in this subsection apply throughout this
16 section unless the context clearly requires otherwise.

17 (a)(i) "Vessel deconstruction" means permanently dismantling a
18 vessel, including: Abatement and removal of hazardous materials; the
19 removal of mechanical, hydraulic, or electronic components or other
20 vessel machinery and equipment; and either the cutting apart or
21 disposal, or both, of vessel infrastructure. For the purposes of this
22 subsection, "hazardous materials" includes fuel, lead, asbestos,
23 polychlorinated biphenyls, and oils.

24 (ii) "Vessel deconstruction" does not include vessel modification
25 or repair.

26 (b) "Qualified vessel deconstruction facility" means structures,
27 including floating structures, that are permitted under section 402 of
28 the clean water act of 1972 (33 U.S.C. Sec. 1342) for vessel
29 deconstruction.

30 (3) Sellers making tax-exempt sales under this section must obtain
31 from the purchaser an exemption certificate in a form and manner
32 prescribed by the department. The seller must retain a copy of the
33 certificate for the seller's files. In lieu of an exemption
34 certificate, a seller may capture the relevant data elements as allowed
35 under the streamlined sales and use tax agreement.

1 NEW SECTION. **Sec. 302.** A new section is added to chapter 82.12
2 RCW to read as follows:

3 (1) This chapter does not apply to the use of vessel deconstruction
4 services performed at:

5 (a) A qualified vessel deconstruction facility; or

6 (b) An area over water that has been permitted under section 402 of
7 the federal clean water act of 1972 (33 U.S.C. Sec. 1342) for vessel
8 deconstruction.

9 (2) The definitions in section 301(2) of this act apply to this
10 section.

11 NEW SECTION. **Sec. 303.** (1) This section is the tax preference
12 performance statement for the tax preference contained in sections 301
13 and 302 of this act. This performance statement is only intended to be
14 used for subsequent evaluation of this tax preference. It is not
15 intended to create a private right of action by any party or be used to
16 determine eligibility for preferential tax treatment.

17 (2) The legislature categorizes this tax preference as intended to
18 induce certain designated behavior by taxpayers as indicated in RCW
19 82.32.808(2)(a).

20 (3) It is the legislature's specific public policy objective to
21 decrease the number of abandoned and derelict vessels by providing
22 incentives to increase vessel deconstruction in Washington by lowering
23 the cost of deconstruction. It is the legislature's intent to provide
24 businesses engaged in vessel deconstruction a sales and use tax
25 exemption for sales of vessel deconstruction. This incentive will
26 lower the costs associated with vessel deconstruction and encourage
27 businesses to make investments in vessel deconstruction facilities.
28 Pursuant to chapter 43.136 RCW, the joint legislative audit and review
29 committee must review the sales tax exemptions provided under sections
30 301 and 302 of this act by December 1, 2018.

31 (4) If a review finds that the increase in available capacity to
32 deconstruct derelict vessels or a reduction in the average cost to
33 deconstruct vessels has resulted in an increase of the number of
34 derelict vessels removed from Washington's waters as compared to before
35 the effective date of this section, then the legislature intends for
36 the legislative auditor to recommend extending the expiration date of
37 the tax preference.

1 (5) In order to obtain the data necessary to perform the review in
2 subsection (3) of this section, the joint legislative audit and review
3 committee should refer to data kept and maintained by the department of
4 natural resources.

5 (6) This section expires January 1, 2019.

6 NEW SECTION. **Sec. 304.** Sections 301 and 302 of this act take
7 effect October 1, 2014.

8 **Part Four--Revenue to Support the Derelict Vessel Removal Program**

9 NEW SECTION. **Sec. 401.** (1) The legislature finds that:

10 (a) Derelict and abandoned vessels are a threat to the safety of
11 the public waterways, an environmental hazard for humans and marine
12 life, and an occupational danger for persons that make their living on
13 the waters of this state;

14 (b) Derelict vessel removal fees are imposed when recreational
15 vessels are registered with the department of licensing. The
16 accumulation of these fees is sufficient for the removal and disposal
17 of recreational vessels that become derelict or abandoned;

18 (c) Derelict vessel removal fees do not apply to commercial
19 vessels. Former commercial vessels are among the most costly to remove
20 from Washington waters and to dispose of in an environmentally
21 responsible manner. The costs for removing and disposing of these
22 vessels far exceeds the funding provided by the derelict vessel removal
23 fees paid by recreational vessels;

24 (d) According to the department of natural resources, as of the
25 effective date of this section, there is a significant backlog of
26 abandoned or derelict vessels that are former commercial vessels; and

27 (e) The use of general fund revenue to pay for the removal and
28 disposal of derelict or abandoned vessels places an undue burden on the
29 nonboating public and reduces the revenue available to pay for
30 necessary governmental services.

31 (2) The legislature intends for either the owners or operators, or
32 both, of commercial vessels to pay their fair share for the removal of
33 abandoned or derelict vessels by imposing a per foot fee on commercial
34 vessels.

1 NEW SECTION. **Sec. 402.** A new section is added to chapter 79.100
2 RCW to read as follows:

3 (1)(a) Except as otherwise provided in (b) of this subsection, an
4 annual derelict vessel removal fee is imposed upon all persons required
5 by RCW 84.40.065 to list any ship or vessel with the department of
6 revenue for state property tax purposes.

7 (b) The derelict vessel removal fee imposed in (a) of this
8 subsection does not apply in any year that a person required to list a
9 ship or vessel does not owe the state property tax levied for
10 collection in that year with respect to that ship or vessel.

11 (c) The annual derelict vessel removal fee is equal to one dollar
12 per vessel foot measured by extreme length of the vessel, rounded up to
13 the nearest whole foot.

14 (2) Each year, the department of revenue must include the amount of
15 the derelict vessel removal fee due under this section for that
16 calendar year in the tax statement required in RCW 84.40.065.

17 (3) The person listing a ship or vessel and the owner of the ship
18 or vessel, if not the same person, are jointly and severally liable for
19 the fee imposed in this section.

20 (4) The department of revenue must collect the derelict vessel
21 removal fee imposed in this section as provided in RCW 84.56.440.

22 (5) All derelict vessel removal fees collected under this section
23 must be deposited into the derelict vessel removal account created in
24 RCW 79.100.100.

25 **Sec. 403.** RCW 84.56.440 and 2008 c 181 s 511 are each amended to
26 read as follows:

27 (1) The department of revenue shall collect the derelict vessel
28 removal fee imposed under section 402 of this act and all ad valorem
29 taxes upon ships and vessels listed with the department in accordance
30 with RCW 84.40.065, and all applicable interest and penalties on such
31 taxes and fees. The taxes and derelict vessel removal fee shall be due
32 and payable to the department on or before the thirtieth day of April
33 and shall be delinquent after that date.

34 (2) If payment of the tax, derelict vessel removal fee, or both, is
35 not received by the department by the due date, there shall be imposed
36 a penalty of five percent of the amount of the unpaid tax and fee; and
37 if the tax (~~(is)~~) and fee are not received within thirty days after the

1 due date, there shall be imposed a total penalty of ten percent of the
2 amount of the unpaid tax and fee; and if the tax (~~(is)~~) and fee are not
3 received within sixty days after the due date, there shall be imposed
4 a total penalty of twenty percent of the amount of the unpaid tax and
5 fee. No penalty so added shall be less than five dollars.

6 (3) Delinquent taxes under this section are subject to interest at
7 the rate set forth in RCW 82.32.050 from the date of delinquency until
8 paid. Delinquent derelict vessel removal fees are also subject to
9 interest at the same rate and in the same manner as provided for
10 delinquent taxes under RCW 82.32.050. Interest or penalties collected
11 on delinquent taxes and derelict vessel removal fees under this section
12 shall be paid by the department into the general fund of the state
13 treasury.

14 (4) If upon information obtained by the department it appears that
15 any ship or vessel required to be listed according to the provisions of
16 RCW 84.40.065 is not so listed, the department shall value the ship or
17 vessel and assess against the owner of the vessel the taxes and
18 derelict vessel removal fees found to be due and shall add thereto
19 interest at the rate set forth in RCW 82.32.050 from the original due
20 date of the tax and fee until the date of payment. The department
21 shall notify the vessel owner by mail of the amount and the same shall
22 become due and shall be paid by the vessel owner within thirty days of
23 the date of the notice. If payment is not received by the department
24 by the due date specified in the notice, the department shall add a
25 penalty of ten percent of the tax and fee found due. A person who
26 willfully gives a false listing or willfully fails to list a ship or
27 vessel as required by RCW 84.40.065 shall be subject to the penalty
28 imposed by RCW 84.40.130(2), which shall be assessed and collected by
29 the department.

30 (5) Delinquent taxes and fees under this section, along with all
31 penalties and interest thereon, shall be collected by the department
32 according to the procedures set forth in chapter 82.32 RCW for the
33 filing and execution of tax warrants, including the imposition of
34 warrant interest. In the event a warrant is issued by the department
35 for the collection of taxes, derelict vessel removal fees, or both,
36 under this section, the department shall add a penalty of five percent
37 of the amount of the delinquent tax and fee, but not less than ten
38 dollars.

1 (~~6~~) (~~The department shall also collect all delinquent taxes~~
2 ~~pertaining to ships and vessels appearing on the records of the county~~
3 ~~treasurers for each of the counties of this state as of December 31,~~
4 ~~1993, including any applicable interest or penalties. The provisions~~
5 ~~of subsection (5) of this section shall apply to the collection of such~~
6 ~~delinquent taxes.~~

7 (7)) During a state of emergency declared under RCW 43.06.010(12),
8 the department, on its own motion or at the request of any taxpayer
9 affected by the emergency, may grant extensions of the due date of any
10 taxes and fees payable under this section as the department deems
11 proper.

12 (7) The department of revenue must withhold the decals required
13 under RCW 88.02.570(10) for failure to pay the state property tax or
14 derelict vessel removal fee collectible under this section.

15 NEW SECTION. Sec. 404. Sections 401 through 403 of this act take
16 effect January 1, 2015.

17 **Part Five--Incentivizing the Registration of Moored Vessels**

18 NEW SECTION. Sec. 501. A new section is added to chapter 88.02
19 RCW to read as follows:

20 (1) A moorage provider that provides long-term moorage must obtain
21 the following information and documentation from persons entering into
22 long-term moorage agreements with the moorage provider:

- 23 (a) The name of the legal owner of the vessel;
- 24 (b) A local contact person and that person's address and telephone
25 number, if different than the owner;
- 26 (c) The owner's address and telephone number;
- 27 (d) The vessel's hull identification number;
- 28 (e) If applicable, the vessel's coast guard registration;
- 29 (f) The vessel's home port;
- 30 (g) The date on which the moorage began;
- 31 (h) The vessel's country or state of registration and registration
32 number; and
- 33 (i) Proof of vessel registration, a written statement of the
34 lessee's intent to register a vessel, or an affidavit in a form and

1 manner approved by the department certifying that the vessel is exempt
2 from state vessel registration requirements as provided by RCW
3 88.02.570.

4 (2) For moorage agreements entered into effective on or after July
5 1, 2014, a long-term moorage agreement for vessels not registered in
6 this state must include, in a form and manner approved by the
7 department and the department of revenue, notice of state vessel
8 registration requirements as provided by this chapter and tax
9 requirements as provided by chapters 82.08, 82.12, and 82.49 RCW and
10 listing requirements as provided by RCW 84.40.065.

11 (3) A moorage provider must maintain records of the information and
12 documents required under this section for at least two years. Upon
13 request, a moorage provider must:

14 (a) Permit any authorized agent of a requesting agency to:

15 (i) Inspect the moorage facility for vessels that are not
16 registered as required by this chapter or listed as required under RCW
17 84.40.065; and

18 (ii) Inspect and copy records identified in subsection (1) of this
19 section for vessels that the requesting agency determines are not
20 properly registered or listed as required by law; or

21 (b) Provide to the requesting agency:

22 (i) Information as provided in subsection (1)(a), (c), (d), and (e)
23 of this section; and

24 (ii) Information as provided in subsection (1)(b), (f), (g), (h),
25 and (i) of this section for those vessels that the requesting agency
26 subsequently determines are not registered as required by this chapter
27 or listed as required under RCW 84.40.065.

28 (4) Requesting agencies must coordinate their requests to ensure
29 that a moorage provider does not receive more than two requests per
30 calendar year. For the purpose of enforcing vessel registration and
31 vessel listing requirements, requesting agencies may share the results
32 of information requests with each other.

33 (5) The information required to be collected under this section
34 must be collected at the time the long-term moorage agreement is
35 entered into and at the time of any renewals of the agreement. The
36 moorage provider is not responsible for updating any changes in the
37 information that occurs after the initial agreement is entered into or
38 in the time period between agreement renewals.

1 (6) The definitions in this subsection apply throughout this
2 section unless the context clearly requires otherwise.

3 (a) "Long-term moorage" means moorage provided for more than thirty
4 consecutive days, unless the moorage is for a vessel that has been
5 taken into custody under RCW 79.100.040.

6 (b) "Moorage facility" means any properties or facilities located
7 in this state that are used for the moorage of vessels and are owned or
8 operated by a moorage provider.

9 (c) "Moorage facility operator" has the same meaning as defined in
10 RCW 53.08.310.

11 (d) "Moorage provider" means any public or private entity that owns
12 or operates any moorage facility, including a moorage facility
13 operator, private moorage facility operator, the state of Washington,
14 or any other person.

15 (e) "Private moorage facility operator" has the same meaning as
16 defined in RCW 88.26.010.

17 (f) "Requesting agency" means the department, the department of
18 revenue, or the department of natural resources.

19 NEW SECTION. **Sec. 502.** A new section is added to chapter 82.49
20 RCW to read as follows:

21 (1) An owner of a vessel that is not registered as required by
22 chapter 88.02 RCW and for which watercraft excise tax is due under this
23 chapter is liable for a penalty in the following amount:

24 (a) One hundred dollars for the owner's first violation;

25 (b) Two hundred dollars for the owner's second violation involving
26 the same or any other vessel; or

27 (c) Four hundred dollars for the owner's third and successive
28 violations involving the same or any other vessel.

29 (2) The department of revenue may collect this penalty under the
30 procedures established in chapter 82.32 RCW. The penalty imposed under
31 this section is in addition to any other civil or criminal penalty
32 imposed by law.

33 **Sec. 503.** RCW 82.49.010 and 2010 c 161 s 1044 are each amended to
34 read as follows:

35 (1) An excise tax is imposed for the privilege of using a vessel
36 upon the waters of this state, except vessels exempt under RCW

1 82.49.020. The annual amount of the excise tax is one-half of one
2 percent of fair market value, as determined under this chapter, or five
3 dollars, whichever is greater. Violation of this subsection is a
4 misdemeanor.

5 (2) (~~Persons who are~~) A person who is required under chapter
6 88.02 RCW to register a vessel in this state and who fails to register
7 the vessel in this state or registers the vessel in another state or
8 foreign country and avoids the Washington watercraft excise tax (~~are~~)
9 is guilty of a gross misdemeanor and (~~are~~) is liable for such unpaid
10 excise tax. The department of revenue may assess and collect the
11 unpaid excise tax under chapter 82.32 RCW, including the penalty
12 imposed in section 502 of this act and penalties and interest provided
13 in chapter 82.32 RCW.

14 (3) The excise tax upon a vessel registered for the first time in
15 this state shall be imposed for a twelve-month period, including the
16 month in which the vessel is registered, unless the director of
17 licensing extends or diminishes vessel registration periods for the
18 purpose of staggered renewal periods under RCW 88.02.560. A vessel is
19 registered for the first time in this state when the vessel was not
20 registered in this state for the immediately preceding registration
21 year, or when the vessel was registered in another jurisdiction for the
22 immediately preceding year.

23 **Part Six--Miscellaneous and Technical**

24 **Sec. 601.** RCW 79.100.060 and 2013 c 291 s 40 are each amended to
25 read as follows:

26 (1) The owner of an abandoned or derelict vessel, or any person or
27 entity that has incurred secondary liability (~~under RCW 79.100.150~~)
28 for an abandoned or derelict vessel under this chapter or section 202
29 of this act, is responsible for reimbursing an authorized public entity
30 for all reasonable and auditable costs associated with the removal or
31 disposal of the owner's vessel under this chapter. These costs
32 include, but are not limited to, costs incurred exercising the
33 authority granted in RCW 79.100.030, all administrative costs incurred
34 by the authorized public entity during the procedure set forth in RCW
35 79.100.040, removal and disposal costs, and costs associated with
36 environmental damages directly or indirectly caused by the vessel. An

1 authorized public entity that has taken temporary possession of a
2 vessel may require that all reasonable and auditable costs associated
3 with the removal of the vessel be paid before the vessel is released to
4 the owner.

5 (2) Reimbursement for costs may be sought from an owner, or any
6 person or entity that has incurred secondary liability under ((RCW
7 79.100.150)) this chapter or section 202 of this act, who is identified
8 subsequent to the vessel's removal and disposal.

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

16 **Sec. 602.** RCW 79.100.120 and 2013 c 291 s 32 are each amended to
17 read as follows:

18 (1) ((A person)) (a) An owner or lien holder seeking to contest an
19 authorized public entity's decision to take temporary possession or
20 custody of a vessel under this chapter, or to contest the amount of
21 reimbursement owed to an authorized public entity under this chapter,
22 may request a hearing in accordance with this section.

23 (b) A transferor or other entity with secondary liability under
24 this chapter or section 202 of this act may commence a lawsuit in the
25 superior court for the county in which custody of the vessel was taken
26 to contest the transferor's or other entity's liability or the amount
27 of reimbursement owed the authorized public entity under this chapter.

28 (2)(a) If the contested decision or action was undertaken by a
29 state agency, a written request for a hearing related to the decision
30 or action must be filed with the pollution control hearings board and
31 served on the state agency in accordance with RCW 43.21B.230 (2) and
32 (3) within thirty days of the date the authorized public entity
33 acquires custody of the vessel under RCW 79.100.040, or if the vessel
34 is redeemed before the authorized public entity acquires custody, the
35 date of redemption, or the right to a hearing is deemed waived and the
36 vessel's owner is liable for any costs owed the authorized public

1 entity. In the event of litigation, the prevailing party is entitled
2 to reasonable attorneys' fees and costs.

3 (b) Upon receipt of a timely hearing request, the pollution control
4 hearings board shall proceed to hear and determine the validity of the
5 decision to take the vessel into temporary possession or custody and
6 the reasonableness of any towing, storage, or other charges permitted
7 under this chapter. Within five business days after the request for a
8 hearing is filed, the pollution control hearings board shall notify the
9 vessel owner requesting the hearing and the authorized public entity of
10 the date, time, and location for the hearing. Unless the vessel is
11 redeemed before the request for hearing is filed, the pollution control
12 hearings board shall set the hearing on a date that is within ten
13 business days of the filing of the request for hearing. If the vessel
14 is redeemed before the request for a hearing is filed, the pollution
15 control hearings board shall set the hearing on a date that is within
16 sixty days of the filing of the request for hearing.

17 (c) Consistent with RCW 43.21B.305, a proceeding brought under this
18 subsection may be heard by one member of the pollution control hearings
19 board, whose decision is the final decision of the board.

20 (3)(a) If the contested decision or action was undertaken by a
21 metropolitan park district, port district, city, town, or county, which
22 has adopted rules or procedures for contesting decisions or actions
23 pertaining to derelict or abandoned vessels, those rules or procedures
24 must be followed in order to contest a decision to take temporary
25 possession or custody of a vessel, or to contest the amount of
26 reimbursement owed.

27 (b) If the metropolitan park district, port district, city, town,
28 or county has not adopted rules or procedures for contesting decisions
29 or actions pertaining to derelict or abandoned vessels, then ((a
30 ~~person~~)) an owner or lien holder requesting a hearing under this
31 section must follow the procedure established in subsection (2) of this
32 section.

33 **Sec. 603.** RCW 79.100.100 and 2013 c 291 s 2 are each amended to
34 read as follows:

35 (1)(a) The derelict vessel removal account is created in the state
36 treasury. All receipts from RCW 79.100.050 and 79.100.060 and those
37 moneys specified in RCW 88.02.640 must be deposited into the account.

1 The account is authorized to receive fund transfers and appropriations
2 from the general fund, deposits from the derelict vessel removal
3 surcharge under RCW 88.02.640(4), deposits under section 402 of this
4 act, as well as gifts, grants, and endowments from public or private
5 sources as may be made from time to time, in trust or otherwise, for
6 the use and benefit of the purposes of this chapter and expend the same
7 or any income according to the terms of the gifts, grants, or
8 endowments provided those terms do not conflict with any provisions of
9 this section or any guidelines developed to prioritize reimbursement of
10 removal projects associated with this chapter.

11 (b) Moneys in the account may only be spent after appropriation.
12 Expenditures from the account may only be used by the department for
13 developing and administering the vessel turn-in program created in RCW
14 79.100.160 and to, except as provided in RCW 79.100.130 and section 203
15 of this act, reimburse authorized public entities for up to ninety
16 percent of the total reasonable and auditable administrative, removal,
17 disposal, and environmental damage costs of abandoned or derelict
18 vessels when the previous owner is either unknown after a reasonable
19 search effort or insolvent. Reimbursement may not be made unless the
20 department determines that the public entity has made reasonable
21 efforts to identify and locate the party responsible for the vessel, or
22 any other person or entity that has incurred secondary liability
23 (~~(under RCW 79.100.150)~~) for the vessel under this chapter or section
24 202 of this act, regardless of the title of owner of the vessel.

25 (c) Funds in the account resulting from transfers from the general
26 fund or from the deposit of funds from the watercraft excise tax as
27 provided for under RCW 82.49.030 must be used to reimburse one hundred
28 percent of costs and should be prioritized for the removal of large
29 vessels.

30 (d) Costs associated with the removal and disposal of an abandoned
31 or derelict vessel under the authority granted in RCW 53.08.320 also
32 qualify for reimbursement from the derelict vessel removal account.

33 (e) In each biennium, up to twenty percent of the expenditures from
34 the derelict vessel removal account may be used for administrative
35 expenses of the department of licensing and department of natural
36 resources in implementing this chapter.

37 (2) Priority for use of this account is for the removal of derelict
38 and abandoned vessels that are in danger of sinking, breaking up, or

1 blocking navigation channels, or that present environmental risks such
2 as leaking fuel or other hazardous substances. The department must
3 develop criteria, in the form of informal guidelines, to prioritize
4 removal projects associated with this chapter, but may not consider
5 whether the applicant is a state or local entity when prioritizing.
6 The guidelines must also include guidance to the authorized public
7 entities as to what removal activities and associated costs are
8 reasonable and eligible for reimbursement.

9 (3) The department must keep all authorized public entities
10 apprised of the balance of the derelict vessel removal account and the
11 funds available for reimbursement. The guidelines developed by the
12 department must also be made available to the other authorized public
13 entities. This subsection (3) must be satisfied by utilizing the least
14 costly method, including maintaining the information on the
15 department's internet web site, or any other cost-effective method.

16 (4) An authorized public entity may contribute its ten percent of
17 costs that are not eligible for reimbursement by using in-kind
18 services, including the use of existing staff, equipment, and
19 volunteers.

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

31 **Sec. 604.** RCW 79.100.010 and 2007 c 342 s 1 are each amended to
32 read as follows:

33 The definitions in this section apply throughout this chapter
34 unless the context clearly requires otherwise.

35 (1) "Abandoned vessel" means a vessel that has been left, moored,
36 or anchored in the same area without the express consent, or contrary
37 to the rules of, the owner, manager, or lessee of the aquatic lands

1 below or on which the vessel is located for either a period of more
2 than thirty consecutive days or for more than a total of ninety days in
3 any three hundred sixty-five-day period, and the vessel's owner is:
4 (a) Not known or cannot be located; or (b) known and located but is
5 unwilling to take control of the vessel. For the purposes of this
6 subsection (1) only, "in the same area" means within a radius of five
7 miles of any location where the vessel was previously moored or
8 anchored on aquatic lands.

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

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

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

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

21 (a) Has been moored, anchored, or otherwise left in the waters of
22 the state or on public property contrary to RCW 79.02.300 or rules
23 adopted by an authorized public entity;

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

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

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

28 (ii) Is obstructing a waterway; or

29 (iii) Is endangering life or property.

30 (6) "Owner" means any natural person, firm, partnership,
31 corporation, association, government entity, or organization that has
32 a lawful right to possession of a vessel by purchase, exchange, gift,
33 lease, inheritance, or legal action whether or not the vessel is
34 subject to a security interest.

35 (7) "Vessel" means every species of watercraft or other mobile
36 artificial contrivance, powered or unpowered, intended to be used for
37 transporting people or goods on water or for floating marine

1 construction or repair and which does not exceed two hundred feet in
2 length. "Vessel" includes any trailer used for the transportation of
3 watercraft, or any attached floats or debris.

4 (8) "Ship" means every species of watercraft or other mobile
5 artificial contrivance, powered or unpowered, intended to be used for
6 transporting people or goods on water or for floating marine
7 construction or repair and that exceeds two hundred feet in length.

8 **Sec. 605.** 2013 c 291 s 39 (uncodified) is amended to read as
9 follows:

10 (1) By December 31, (~~2013~~) 2014, the department of natural
11 resources shall adopt by rule initial procedures and standards for the
12 vessel inspections required under (~~section 38 of this act~~) RCW
13 79.100.150. The procedures and standards must identify the public or
14 private entities authorized to conduct inspections, the required
15 elements of an inspection, and the manner in which inspection results
16 must be documented. The vessel inspection required under this section
17 must be designed to:

18 (a) Provide the transferee with current information about the
19 condition of the vessel, including the condition of its hull and key
20 operating systems, prior to the transfer;

21 (b) Provide the department of natural resources with information
22 under (a) of this subsection for each applicable vessel and, more
23 broadly, to improve the department's understanding of the condition of
24 the larger, older boats in the state's waters;

25 (c) Discourage the future abandonment or dereliction of the vessel;
26 and

27 (d) Maximize the efficiency and effectiveness of the inspection
28 process, including with respect to the time and resources of the
29 transferor, transferee, and the state.

30 (2) The department of natural resources shall work with appropriate
31 government agencies and stakeholders in designing the inspection
32 process and standards under this section.

33 (3) This section expires July 31, (~~2014~~) 2015.

34 NEW SECTION. **Sec. 606.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected."

2SHB 2457 - S AMD

By Senators Pearson, Lias

ADOPTED 03/07/2014

3 On page 1, line 1 of the title, after "vessels;" strike the
4 remainder of the title and insert "amending RCW 79.100.150, 79.100.130,
5 88.26.010, 53.08.310, 84.56.440, 82.49.010, 79.100.060, 79.100.120,
6 79.100.100, and 79.100.010; amending 2013 c 291 s 39 (uncodified);
7 adding new sections to chapter 79.100 RCW; adding a new section to
8 chapter 88.26 RCW; adding a new section to chapter 53.08 RCW; adding a
9 new section to chapter 82.08 RCW; adding a new section to chapter 82.12
10 RCW; adding a new section to chapter 88.02 RCW; adding a new section to
11 chapter 82.49 RCW; creating new sections; prescribing penalties;
12 providing effective dates; and providing expiration dates."

EFFECT: Changes the penalty for purchasers of vessels older than 40 years and longer than 65 ft. who cancel marine insurance prematurely from a gross misdemeanor to a misdemeanor; adds as a misdemeanor a purchaser's failure to secure marine insurance as required by the act, subject to certain exceptions; specifies certain conditions under which sellers may transfer ownership of unseaworthy vessels; changes a requirement that vessels "display" proof of insurance as a condition of moorage to a requirement that they "provide" a marina with proof of insurance; clarifies that marinas are not required to verify liability coverage for mooring vessels; clarifies that marinas must obtain proof of a mooring vessel's insurance at moorage agreement initiation or renewal after the effective date of the act; changes a secondary liability penalty for public marinas that fail to collect proof of insurance or maintain its own insurance to an ineligibility for cost reimbursement from the derelict vessel removal account; adds vessels taken into custody under the derelict vessel removal program to the definition of "transient vessels"; reduces the new derelict vessel removal fee for commercial vessels from \$3 to \$1 per vessel foot; defines a term and makes technical corrections.

--- END ---