

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1764

63rd Legislature
2013 Regular Session

Passed by the House April 23, 2013
Yeas 93 Nays 4

Speaker of the House of Representatives

Passed by the Senate April 16, 2013
Yeas 45 Nays 2

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1764** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1764

AS AMENDED BY THE SENATE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By House Appropriations (originally sponsored by Representatives
Chandler, Stanford, Blake, Appleton, and Dunshee)

READ FIRST TIME 03/01/13.

1 AN ACT Relating to geoduck diver licenses; amending RCW 77.65.410;
2 reenacting and amending RCW 79.135.210; adding a new section to chapter
3 77.65 RCW; adding new sections to chapter 43.30 RCW; creating new
4 sections; and providing an expiration date.

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

6 **Sec. 1.** RCW 77.65.410 and 1993 c 340 s 24 are each amended to read
7 as follows:

8 (1)(a) Every diver engaged in the commercial harvest of subtidal
9 geoduck clams shall obtain a ((nontransferable)) geoduck diver license.
10 An individual may only own one license and all geoduck harvesting
11 performed under the license must be done personally by the actual
12 license holder.

13 (b) The licensing requirement created in this section does not
14 apply to divers engaged in activities related to the cultivation of
15 geoduck clams as private sector cultured aquatic products as defined in
16 RCW 15.85.020.

17 (c) The geoduck diver license is a nontransferable license.

18 (2) Beginning January 1, 2015, the director may not issue more than
19 seventy-seven geoduck diver licenses in any one year.

1 (3) The annual geoduck diver license fee is as provided in RCW
2 77.65.440.

3 (4) A geoduck diver license expires on December 31st of each year.
4 Prior to the license's expiration, a license holder may apply to renew
5 the license holder's geoduck diver license only if the license holder
6 is included on a department of natural resources' geoduck harvest
7 agreement plan of operation during the applicable current calendar
8 year.

9 (5) Beginning January 1, 2015, each person applying for or renewing
10 a geoduck diver license under this section must complete the geoduck
11 diver safety program established in section 5 of this act prior to
12 being issued a license.

13 NEW SECTION. Sec. 2. (1) The director of the department of fish
14 and wildlife shall give individuals who held a geoduck diver license in
15 2011, 2012, 2013, or 2014, and who were listed on a department of
16 natural resources' geoduck harvest agreement plan of operation during
17 the same period, the right of first refusal to purchase a geoduck diver
18 license for the 2015 license year.

19 (2) Any license holder who qualifies for the right of first refusal
20 under this section must have his or her intent to purchase a geoduck
21 diver license in 2015 known to the director of the department of fish
22 and wildlife within six months of the effective date of this section.

23 (3) This section expires June 30, 2016.

24 NEW SECTION. Sec. 3. A new section is added to chapter 77.65 RCW
25 to read as follows:

26 The department must revoke a geoduck diver license issued under RCW
27 77.65.410, and the licensee must surrender the license, if the licensee
28 is found in violation of a department of natural resources' geoduck
29 harvest agreement two or more times. The person surrendering the
30 geoduck diver license may not hold another geoduck diver license for a
31 period of one calendar year from the date the license is surrendered.

32 NEW SECTION. Sec. 4. A new section is added to chapter 43.30 RCW
33 to read as follows:

34 (1) The department shall establish a geoduck harvest safety
35 committee. The geoduck harvest safety committee consists of one

1 representative from the department, one representative from the
2 department's geoduck diver advisory committee, one representative from
3 an organization representing the interests of geoduck harvesters, and
4 one representative from an organization representing the interests of
5 geoduck divers. Each representative must be appointed by the
6 administrator.

7 (2) The geoduck harvest safety committee must meet at least
8 quarterly. By December 1, 2013, the committee must submit a
9 recommendation to the department regarding the establishment of a
10 geoduck diver safety program and safety requirements for geoduck divers
11 licensed under RCW 77.65.410.

12 (3) Upon the establishment of the geoduck diver safety program
13 under section 5 of this act, the geoduck harvest safety committee must
14 continue to review and evaluate the safety program's success and
15 effectiveness and recommend to the department appropriate changes to
16 improve the geoduck diver safety program.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.30 RCW
18 to read as follows:

19 (1) By December 1, 2014, the department must, by rule, create a
20 geoduck diver safety program and establish safety requirements for
21 geoduck divers licensed under RCW 77.65.410. The department must adopt
22 rules based on the recommendation of the geoduck harvest safety
23 committee established in section 4 of this act.

24 (2) The department may adopt, amend, or repeal rules as needed to
25 ensure the success and effectiveness of the geoduck diver safety
26 program created under subsection (1) of this section. The department
27 must consider the recommendations provided by the geoduck harvest
28 safety committee under section 4(3) of this act.

29 (3) The department may not adopt rules in conflict with commercial
30 diving safety standards and regulations promulgated and implemented by
31 the federal occupational safety and health administration established
32 under the federal occupational safety and health act of 1970 (84 Stat.
33 1590 et seq.; 29 U.S.C. Sec. 651 et seq.).

34 (4) A civil suit or action may not be commenced or prosecuted
35 against the administrator, department, or any other government officer
36 or entity by reason of any actions taken in connection with the
37 adoption or enforcement of the geoduck diver safety program and safety

1 requirements established under subsections (1) and (2) of this section.
2 The state of Washington does not waive its sovereign immunity with
3 respect to any actions taken by the department under this section.

4 **Sec. 6.** RCW 79.135.210 and 2005 c 155 s 708 and 2005 c 113 s 3 are
5 each reenacted and amended to read as follows:

6 (1) Except as provided in RCW 79.135.040, geoducks shall be sold as
7 valuable materials under the provisions of chapter 79.90 RCW. After
8 confirmation of the sale, the department may enter into an agreement
9 with the purchaser for the harvesting of geoducks. The department may
10 place terms and conditions in the harvesting agreements as the
11 department deems necessary. The department may enforce the provisions
12 of any harvesting agreement by suspending or canceling the harvesting
13 agreement or through any other means contained in the harvesting
14 agreement. Any geoduck harvester may terminate a harvesting agreement
15 entered into pursuant to this subsection if actions of a governmental
16 agency, beyond the control of the harvester, its agents, or its
17 employees, prohibit harvesting, for a period exceeding thirty days
18 during the term of the harvesting agreement, except as provided within
19 the agreement. Upon termination of the agreement by the harvester, the
20 harvester shall be reimbursed by the department for the cost paid to
21 the department on the agreement, less the value of the harvest already
22 accomplished by the harvester under the agreement.

23 (2) Harvesting agreements under this title for the purpose of
24 harvesting geoducks shall require the harvester and the harvester's
25 agent or representatives to comply with all applicable commercial
26 diving safety standards and regulations promulgated and implemented by
27 the federal occupational safety and health administration established
28 under the federal occupational safety and health act of 1970 as the law
29 exists or as amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et
30 seq.). However, for the purposes of this section and RCW 77.60.070,
31 all persons who dive for geoducks are deemed to be employees as defined
32 by the federal occupational safety and health act. All harvesting
33 agreements shall provide that failure to comply with these standards is
34 cause for suspension or cancellation of the harvesting agreement.
35 Further, for the purposes of this subsection if the harvester contracts
36 with another person or entity for the harvesting of geoducks, the

1 harvesting agreement shall not be suspended or canceled if the
2 harvester terminates its business relationship with such an entity
3 until compliance with this subsection is secured.

4 (3) Beginning January 1, 2015, geoduck divers licensed under RCW
5 77.65.410 must annually complete the geoduck diver safety program
6 established in section 5 of this act in order to be maintained on a
7 department of natural resources' harvest agreement plan of operation.

8 NEW SECTION. **Sec. 7.** The department of fish and wildlife may
9 adopt any rules deemed necessary to implement sections 1 through 3 of
10 this act.

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