

SSB 6223 - H COMM AMD

By Committee on Natural Resources, Ecology & Parks

ADOPTED 03/01/2006

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 79.100  
4 RCW to read as follows:

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

7 **Sec. 2.** RCW 79.100.010 and 2002 c 286 s 2 are each amended to read  
8 as follows:

9 The definitions in this section apply throughout this chapter  
10 unless the context clearly requires otherwise.

11 (1) "Abandoned vessel" means the vessel's owner is not known or  
12 cannot be located, or if the vessel's owner is known and located but is  
13 unwilling to take control of the vessel, and the vessel has been left,  
14 moored, or anchored in the same area without the express consent, or  
15 contrary to the rules, of the owner, manager, or lessee of the aquatic  
16 lands below or on which the vessel is located for either a period of  
17 more than thirty consecutive days or for more than a total of ninety  
18 days in any three hundred sixty-five day period. For the purposes of  
19 this subsection (1) only, "in the same area" means within a radius of  
20 five miles of any location where the vessel was previously moored or  
21 anchored on aquatic lands.

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

25 (3) "Authorized public entity" includes any of the following: The  
26 department of natural resources; the department of fish and wildlife;  
27 the parks and recreation commission; a metropolitan park district; a  
28 port district; and any city, town, or county with ownership,

1 management, or jurisdiction over the aquatic lands where an abandoned  
2 or derelict vessel is located.

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

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

6 (a) Has been moored, anchored, or otherwise left in the waters of  
7 the state or on public property contrary to RCW ((79.01.760)) 79.02.300  
8 or rules adopted by an authorized public entity;

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

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

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

13 (ii) Is obstructing a waterway; or

14 (iii) Is endangering life or property.

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

20 (7) "Vessel" has the same meaning as defined in RCW 53.08.310.

21 **Sec. 3.** RCW 79.100.040 and 2002 c 286 s 5 are each amended to read  
22 as follows:

23 (1) Prior to exercising the authority granted in RCW 79.100.030,  
24 the authorized public entity must first obtain custody of the vessel.  
25 To do so, the authorized public entity must:

26 (a) Mail notice of its intent to obtain custody, at least twenty  
27 days prior to taking custody, to the last known address of the previous  
28 owner to register the vessel in any state or with the federal  
29 government and to any lien holders or secured interests on record. A  
30 notice need not be sent to the purported owner or any other person  
31 whose interest in the vessel is not recorded with a state or federal  
32 agency;

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

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

5 (2) All notices sent, posted, or published in accordance with this  
6 section must, at a minimum, explain the intent of the authorized public  
7 entity to take custody of the vessel, the rights of the authorized  
8 public entity after taking custody of the vessel as provided in RCW  
9 79.100.030, the procedures the owner must follow in order to avoid  
10 custody being taken by the authorized public entity, the procedures the  
11 owner must follow in order to reclaim possession after custody is taken  
12 by the authorized public entity, and the financial liabilities that the  
13 owner may incur as provided for in RCW 79.100.060.

14 (3) If a vessel is in immediate danger of sinking, breaking up, or  
15 blocking navigational channels, and the owner of the vessel cannot be  
16 located or is unwilling or unable to assume immediate responsibility  
17 for the vessel, (~~an~~) any authorized public entity may tow, beach, or  
18 otherwise take temporary possession of the vessel. Before taking  
19 temporary possession of the vessel, the authorized public entity must  
20 make reasonable attempts to consult with the department (~~and~~) or the  
21 United States coast guard to ensure that other remedies are not  
22 available. The basis for taking temporary possession of the vessel  
23 must be set out in writing by the authorized public entity within seven  
24 days of taking action and be submitted to the owner, if known, as soon  
25 thereafter as is reasonable. If the authorized public entity has not  
26 already provided the required notice, immediately after taking  
27 possession of the vessel, the authorized public entity must initiate  
28 the notice provisions in subsection (1) of this section. The  
29 authorized public entity must complete the notice requirements of  
30 subsection (1) of this section before using or disposing of the vessel  
31 as authorized in RCW 79.100.050.

32 **Sec. 4.** RCW 79.100.060 and 2002 c 286 s 7 are each amended to read  
33 as follows:

34 (1) The owner of an abandoned or derelict vessel is responsible for  
35 reimbursing an authorized public entity for all reasonable and  
36 auditable costs associated with the removal or disposal of the owner's  
37 vessel under this chapter. These costs include, but are not limited

1 to, costs incurred exercising the authority granted in RCW 79.100.030,  
2 all administrative costs incurred by the authorized public entity  
3 during the procedure set forth in RCW 79.100.040, removal and disposal  
4 costs, and costs associated with environmental damages directly or  
5 indirectly caused by the vessel. An authorized public entity that has  
6 taken temporary possession of a vessel may require that all reasonable  
7 and auditable costs associated with the removal of the vessel be paid  
8 before the vessel is released to the owner.

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

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

18 NEW SECTION. Sec. 5. A new section is added to chapter 79.100 RCW  
19 to read as follows:

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

25 (2)(a) If the contested decision or action was undertaken by a  
26 state agency, a written request for a hearing related to the decision  
27 or action must be filed with the aquatic resources division of the  
28 department within twenty days of the date the authorized public entity  
29 acquires custody of the vessel under RCW 79.100.040, or if the vessel  
30 is redeemed before the authorized public entity acquires custody, the  
31 date of redemption, or the right to a hearing is deemed waived and the  
32 vessel's owner is liable for any costs owed the authorized public  
33 entity. In the event of litigation, the prevailing party is entitled  
34 to reasonable attorneys' fees and costs.

35 (b) Upon receipt of a timely hearing request, the department shall  
36 proceed to hear and determine the validity of the decision to take the  
37 vessel into temporary possession or custody and the reasonableness of

1 any towing, storage, or other charges permitted under this chapter.  
2 Within five business days after the request for a hearing is filed, the  
3 department shall notify the vessel owner requesting the hearing and the  
4 authorized public entity of the date, time, and location for the  
5 hearing. Unless the vessel is redeemed before the request for hearing  
6 is filed, the department shall set the hearing on a date that is within  
7 ten business days of the filing of the request for hearing. If the  
8 vessel is redeemed before the request for a hearing is filed, the  
9 department shall set the hearing on a date that is within sixty days of  
10 the filing of the request for hearing.

11 (3)(a) If the contested decision or action was undertaken by a  
12 metropolitan park district, port district, city, town, or county, which  
13 has adopted rules or procedures for contesting decisions or actions  
14 pertaining to derelict or abandoned vessels, those rules or procedures  
15 must be followed in order to contest a decision to take temporary  
16 possession or custody of a vessel, or to contest the amount of  
17 reimbursement owed.

18 (b) If the metropolitan park district, port district, city, town,  
19 or county has not adopted rules or procedures for contesting decisions  
20 or actions pertaining to derelict or abandoned vessels, then a person  
21 requesting a hearing under this section must follow the procedure  
22 established in RCW 53.08.320(5) for contesting the decisions or actions  
23 of moorage facility operators.

24 **Sec. 6.** RCW 79.100.100 and 2002 c 286 s 11 are each amended to  
25 read as follows:

26 (1) The derelict vessel removal account is created in the state  
27 treasury. All receipts from RCW 79.100.050 and 79.100.060 and those  
28 moneys specified in RCW 88.02.030 and 88.02.050 must be deposited into  
29 the account. The account is authorized to receive gifts, grants, and  
30 endowments from public or private sources as may be made from time to  
31 time, in trust or otherwise, for the use and benefit of the purposes of  
32 this chapter and expend the same or any income according to the terms  
33 of the gifts, grants, or endowments provided those terms do not  
34 conflict with any provisions of this section or any guidelines  
35 developed to prioritize reimbursement of removal projects associated  
36 with this chapter. Moneys in the account may only be spent after  
37 appropriation. Expenditures from the account shall be used by the

1 department to reimburse authorized public entities for (~~seventy-five~~)  
2 up to ninety percent of the total reasonable and auditable  
3 administrative, removal, disposal, and environmental damage costs of  
4 abandoned or derelict vessels when the previous owner is either unknown  
5 after a reasonable search effort or insolvent. (~~During the 2001-2003~~  
6 ~~biennium, up to forty percent of the expenditures from the account may~~  
7 ~~be used for administrative expenses of the department of licensing and~~  
8 ~~department of natural resources in implementing this chapter.)) Costs  
9 associated with removal and disposal of an abandoned or derelict vessel  
10 under the authority granted in RCW 53.08.320 also qualify for  
11 reimbursement from the derelict vessel removal account. In each  
12 (~~subsequent~~) biennium, up to twenty percent of the expenditures from  
13 the account may be used for administrative expenses of the department  
14 of licensing and department of natural resources in implementing this  
15 chapter.~~

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

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

30 (4) The department must keep all authorized public entities  
31 apprized of the balance of the derelict vessel removal account and the  
32 funds available for reimbursement. The guidelines developed by the  
33 department must also be made available to the other authorized public  
34 entities. This subsection (4) must be satisfied by utilizing the least  
35 costly method, including maintaining the information on the  
36 department's internet web site, or any other cost-effective method.

37 (5) An authorized public entity may contribute its (~~twenty-five~~)

1 ten percent of costs that are not eligible for reimbursement by using  
2 in-kind services, including the use of existing staff, equipment, and  
3 volunteers.

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

15 NEW SECTION. Sec. 7. RCW 79.100.090 (Contest  
16 custody/reimbursement--Lawsuit) and 2002 c 286 s 10 are each repealed."

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