

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6223

59th Legislature
2006 Regular Session

Passed by the Senate March 6, 2006
YEAS 45 NAYS 0

President of the Senate

Passed by the House March 1, 2006
YEAS 98 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6223** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6223

AS AMENDED BY THE HOUSE

Passed Legislature - 2006 Regular Session

State of Washington 59th Legislature 2006 Regular Session

By Senate Committee on Natural Resources, Ocean & Recreation
(originally sponsored by Senators Rockefeller, Regala, Oke, Berkey
and Spanel)

READ FIRST TIME 02/02/06.

1 AN ACT Relating to derelict or abandoned vessels; amending RCW
2 79.100.010, 79.100.040, 79.100.060, and 79.100.100; adding new sections
3 to chapter 79.100 RCW; repealing RCW 79.100.090; and prescribing
4 penalties.

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

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

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

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

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

14 (1) "Abandoned vessel" means the vessel's owner is not known or
15 cannot be located, or if the vessel's owner is known and located but is
16 unwilling to take control of the vessel, and the vessel has been left,
17 moored, or anchored in the same area without the express consent, or
18 contrary to the rules, of the owner, manager, or lessee of the aquatic

1 lands below or on which the vessel is located for either a period of
2 more than thirty consecutive days or for more than a total of ninety
3 days in any three hundred sixty-five day period. For the purposes of
4 this subsection (1) only, "in the same area" means within a radius of
5 five miles of any location where the vessel was previously moored or
6 anchored on aquatic lands.

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

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

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

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

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

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

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

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

26 (ii) Is obstructing a waterway; or

27 (iii) Is endangering life or property.

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

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

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

36 (1) Prior to exercising the authority granted in RCW 79.100.030,

1 the authorized public entity must first obtain custody of the vessel.
2 To do so, the authorized public entity must:

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

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

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

18 (2) All notices sent, posted, or published in accordance with this
19 section must, at a minimum, explain the intent of the authorized public
20 entity to take custody of the vessel, the rights of the authorized
21 public entity after taking custody of the vessel as provided in RCW
22 79.100.030, the procedures the owner must follow in order to avoid
23 custody being taken by the authorized public entity, the procedures the
24 owner must follow in order to reclaim possession after custody is taken
25 by the authorized public entity, and the financial liabilities that the
26 owner may incur as provided for in RCW 79.100.060.

27 (3) If a vessel is in immediate danger of sinking, breaking up, or
28 blocking navigational channels, and the owner of the vessel cannot be
29 located or is unwilling or unable to assume immediate responsibility
30 for the vessel, (~~an~~) any authorized public entity may tow, beach, or
31 otherwise take temporary possession of the vessel. Before taking
32 temporary possession of the vessel, the authorized public entity must
33 make reasonable attempts to consult with the department (~~and~~) or the
34 United States coast guard to ensure that other remedies are not
35 available. The basis for taking temporary possession of the vessel
36 must be set out in writing by the authorized public entity within seven
37 days of taking action and be submitted to the owner, if known, as soon
38 thereafter as is reasonable. If the authorized public entity has not

1 already provided the required notice, immediately after taking
2 possession of the vessel, the authorized public entity must initiate
3 the notice provisions in subsection (1) of this section. The
4 authorized public entity must complete the notice requirements of
5 subsection (1) of this section before using or disposing of the vessel
6 as authorized in RCW 79.100.050.

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

9 (1) The owner of an abandoned or derelict vessel is responsible for
10 reimbursing an authorized public entity for all reasonable and
11 auditable costs associated with the removal or disposal of the owner's
12 vessel under this chapter. These costs include, but are not limited
13 to, costs incurred exercising the authority granted in RCW 79.100.030,
14 all administrative costs incurred by the authorized public entity
15 during the procedure set forth in RCW 79.100.040, removal and disposal
16 costs, and costs associated with environmental damages directly or
17 indirectly caused by the vessel. An authorized public entity that has
18 taken temporary possession of a vessel may require that all reasonable
19 and auditable costs associated with the removal of the vessel be paid
20 before the vessel is released to the owner.

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

23 (3) If the full amount of all costs due to the authorized public
24 entity under this chapter is not paid to the authorized public entity
25 within thirty days after first notifying the responsible parties of the
26 amounts owed, the authorized public entity or the department may bring
27 an action in any court of competent jurisdiction to recover the costs,
28 plus reasonable attorneys' fees and costs incurred by the authorized
29 public entity.

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 79.100 RCW
31 to read as follows:

32 (1) A person seeking to contest an authorized public entity's
33 decision to take temporary possession or custody of a vessel under this
34 chapter, or to contest the amount of reimbursement owed to an
35 authorized public entity under this chapter, may request a hearing in
36 accordance with this section.

1 (2)(a) If the contested decision or action was undertaken by a
2 state agency, a written request for a hearing related to the decision
3 or action must be filed with the aquatic resources division of the
4 department within twenty days of the date the authorized public entity
5 acquires custody of the vessel under RCW 79.100.040, or if the vessel
6 is redeemed before the authorized public entity acquires custody, the
7 date of redemption, or the right to a hearing is deemed waived and the
8 vessel's owner is liable for any costs owed the authorized public
9 entity. In the event of litigation, the prevailing party is entitled
10 to reasonable attorneys' fees and costs.

11 (b) Upon receipt of a timely hearing request, the department shall
12 proceed to hear and determine the validity of the decision to take the
13 vessel into temporary possession or custody and the reasonableness of
14 any towing, storage, or other charges permitted under this chapter.
15 Within five business days after the request for a hearing is filed, the
16 department shall notify the vessel owner requesting the hearing and the
17 authorized public entity of the date, time, and location for the
18 hearing. Unless the vessel is redeemed before the request for hearing
19 is filed, the department shall set the hearing on a date that is within
20 ten business days of the filing of the request for hearing. If the
21 vessel is redeemed before the request for a hearing is filed, the
22 department shall set the hearing on a date that is within sixty days of
23 the filing of the request for hearing.

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

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

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

3 (1) The derelict vessel removal account is created in the state
4 treasury. All receipts from RCW 79.100.050 and 79.100.060 and those
5 moneys specified in RCW 88.02.030 and 88.02.050 must be deposited into
6 the account. The account is authorized to receive gifts, grants, and
7 endowments from public or private sources as may be made from time to
8 time, in trust or otherwise, for the use and benefit of the purposes of
9 this chapter and expend the same or any income according to the terms
10 of the gifts, grants, or endowments provided those terms do not
11 conflict with any provisions of this section or any guidelines
12 developed to prioritize reimbursement of removal projects associated
13 with this chapter. Moneys in the account may only be spent after
14 appropriation. Expenditures from the account shall be used by the
15 department to reimburse authorized public entities for ~~((seventy-five))~~
16 up to ninety percent of the total reasonable and auditable
17 administrative, removal, disposal, and environmental damage costs of
18 abandoned or derelict vessels when the previous owner is either unknown
19 after a reasonable search effort or insolvent. ~~((During the 2001-2003~~
20 ~~biennium, up to forty percent of the expenditures from the account may~~
21 ~~be used for administrative expenses of the department of licensing and~~
22 ~~department of natural resources in implementing this chapter.))~~ Costs
23 associated with removal and disposal of an abandoned or derelict vessel
24 under the authority granted in RCW 53.08.320 also qualify for
25 reimbursement from the derelict vessel removal account. In each
26 ~~((subsequent))~~ biennium, up to twenty percent of the expenditures from
27 the account may be used for administrative expenses of the department
28 of licensing and department of natural resources in implementing this
29 chapter.

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

34 (3) Priority for use of this account is for the removal of derelict
35 and abandoned vessels that are in danger of sinking, breaking up, or
36 blocking navigation channels, or that present environmental risks such
37 as leaking fuel or other hazardous substances. The department must
38 develop criteria, in the form of informal guidelines, to prioritize

1 removal projects associated with this chapter, but may not consider
2 whether the applicant is a state or local entity when prioritizing.
3 The guidelines must also include guidance to the authorized public
4 entities as to what removal activities and associated costs are
5 reasonable and eligible for reimbursement.

6 (4) The department must keep all authorized public entities
7 apprized of the balance of the derelict vessel removal account and the
8 funds available for reimbursement. The guidelines developed by the
9 department must also be made available to the other authorized public
10 entities. This subsection (4) must be satisfied by utilizing the least
11 costly method, including maintaining the information on the
12 department's internet web site, or any other cost-effective method.

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

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

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

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