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ENGROSSED SECOND SUBSTITUTE SENATE BILL 6044

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State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Rockefeller and Swecker)

READ FIRST TIME 03/05/07.

1 AN ACT Relating to derelict vessels; amending RCW 79.100.010,  
2 79.100.040, 79.100.100, 82.49.030, 88.02.050, and 88.02.050; adding a  
3 new section to chapter 79.100 RCW; adding new sections to chapter 88.02  
4 RCW; creating a new section; providing an effective date; and providing  
5 expiration dates.

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

7 **Sec. 1.** RCW 79.100.010 and 2006 c 153 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)) a vessel that has  
19 been left, moored, or anchored in the same area without the express~~

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

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

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

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

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

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

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

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

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

29 (ii) Is obstructing a waterway; or

30 (iii) Is endangering life or property.

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

36 (7) "Vessel" (~~has the same meaning as defined in RCW 53.08.310~~)  
37 means every species of watercraft or other mobile artificial  
38 contrivance, powered or unpowered, intended to be used for transporting

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

5 **Sec. 2.** RCW 79.100.040 and 2006 c 153 s 3 are each amended to read  
6 as follows:

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

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

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

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

25 (2) All notices sent, posted, or published in accordance with this  
26 section must, at a minimum, explain the intent of the authorized public  
27 entity to take custody of the vessel, the rights of the authorized  
28 public entity after taking custody of the vessel as provided in RCW  
29 79.100.030, the procedures the owner must follow in order to avoid  
30 custody being taken by the authorized public entity, the procedures the  
31 owner must follow in order to reclaim possession after custody is taken  
32 by the authorized public entity, and the financial liabilities that the  
33 owner may incur as provided for in RCW 79.100.060.

34 (3)(a) If a vessel is: (i) In immediate danger of sinking,  
35 breaking up, or blocking navigational channels((τ)); or (ii) poses a  
36 reasonably imminent threat to human health or safety, including a  
37 threat of environmental contamination; and (iii) the owner of the

1 vessel cannot be located or is unwilling or unable to assume immediate  
2 responsibility for the vessel, any authorized public entity may tow,  
3 beach, or otherwise take temporary possession of the vessel.

4 (b) Before taking temporary possession of the vessel, the  
5 authorized public entity must make reasonable attempts to consult with  
6 the department or the United States coast guard to ensure that other  
7 remedies are not available. The basis for taking temporary possession  
8 of the vessel must be set out in writing by the authorized public  
9 entity within seven days of taking action and be submitted to the  
10 owner, if known, as soon thereafter as is reasonable. If the  
11 authorized public entity has not already provided the required notice,  
12 immediately after taking possession of the vessel, the authorized  
13 public entity must initiate the notice provisions in subsection (1) of  
14 this section. The authorized public entity must complete the notice  
15 requirements of subsection (1) of this section before using or  
16 disposing of the vessel as authorized in RCW 79.100.050.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 79.100 RCW  
18 to read as follows:

19 A marina owner may contract with a local government for the purpose  
20 of participating in the derelict vessel removal program. The local  
21 government shall serve as the authorized public entity for the removal  
22 of the derelict vessel from the marina owner's property. The contract  
23 must provide for the marina owner to be financially responsible for the  
24 removal costs that are not reimbursed by the department as provided  
25 under RCW 79.100.100, and any additional reasonable administrative  
26 costs incurred by the local government during the removal of the  
27 derelict vessel. Prior to the commencement of any removal which will  
28 seek reimbursement from the derelict vessel removal program, the  
29 contract and the proposed vessel removal shall be submitted to the  
30 department for review and approval. The local government shall use the  
31 procedure specified under RCW 79.100.100(6).

32 **Sec. 4.** RCW 79.100.100 and 2006 c 153 s 6 are each amended to read  
33 as follows:

34 (1) The derelict vessel removal account is created in the state  
35 treasury. All receipts from RCW 79.100.050 and 79.100.060 and those  
36 moneys specified in RCW 88.02.030 and 88.02.050 must be deposited into

1 the account. The account is authorized to receive fund transfers from  
2 the general fund, deposits from the watercraft excise tax under RCW  
3 82.49.030, deposits from the derelict vessel removal surcharge under  
4 section 9 of this act, as well as gifts, grants, and endowments from  
5 public or private sources as may be made from time to time, in trust or  
6 otherwise, for the use and benefit of the purposes of this chapter and  
7 expend the same or any income according to the terms of the gifts,  
8 grants, or endowments provided those terms do not conflict with any  
9 provisions of this section or any guidelines developed to prioritize  
10 reimbursement of removal projects associated with this chapter. Moneys  
11 in the account may only be spent after appropriation. Expenditures  
12 from the account shall be used by the department to reimburse  
13 authorized public entities for up to ninety percent of the total  
14 reasonable and auditable administrative, removal, disposal, and  
15 environmental damage costs of abandoned or derelict vessels when the  
16 previous owner is either unknown after a reasonable search effort or  
17 insolvent. Reimbursement shall not be made unless the department  
18 determines that the public entity has made reasonable efforts to  
19 identify and locate the party responsible for the vessel, regardless of  
20 the title of owner of the vessel. Funds in the account resulting from  
21 transfers from the general fund or from the deposit of funds from the  
22 watercraft excise tax as provided for under RCW 82.49.030 shall be used  
23 to reimburse one hundred percent of these costs and should be  
24 prioritized for the removal of large vessels. Costs associated with  
25 removal and disposal of an abandoned or derelict vessel under the  
26 authority granted in RCW 53.08.320 also qualify for reimbursement from  
27 the derelict vessel removal account. In each biennium, up to twenty  
28 percent of the expenditures from the account may be used for  
29 administrative expenses of the department of licensing and department  
30 of natural resources in implementing this chapter.

31 (2) If the balance of the account reaches one million dollars as of  
32 March 1st of any year, exclusive of any fund transfers from the general  
33 fund or any funds deposited into the account collected under RCW  
34 82.49.030 and section 9 of this act, the department must notify the  
35 department of licensing and the collection of any fees associated with  
36 this account must be suspended for the following fiscal year.

37 (3) 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 (4) The department must keep all authorized public entities  
10 apprized 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 (4) 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 (5) 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 (6) 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 NEW SECTION. **Sec. 5.** A new section is added to chapter 88.02 RCW  
32 to read as follows:

33 (1) A marina that leases permanent moorage to vessels must require  
34 the following information from the lessee as a condition of leasing  
35 moorage space: (a) The name of the legal owner of the vessel; (b) a  
36 local contact person, if different than the owner; (c) the owner's  
37 address and telephone number; (d) the vessel's hull identification

1 number; (e) the vessel's coast guard registration, if applicable; (f)  
2 the vessel's home port; (g) the date on which the moorage lease began;  
3 and (h) the vessel's country or state of registration and registration  
4 number. A marina shall maintain records of this information for at  
5 least two years. The marina shall permit any authorized agent of the  
6 department of natural resources to inspect these records upon request.

7 (2) A marina that leases permanent moorage to vessels must require  
8 proof of vessel registration or a written statement of intent to  
9 register a vessel as a condition of leasing moorage space. If the  
10 applicant's vessel is not registered in this state, the marina must  
11 inform the moorage applicant of the state law requiring vessel  
12 registration and direct the moorage applicant to the appropriate vessel  
13 registration forms. Thereafter, it is the moorage applicant's  
14 responsibility to register the vessel.

15 **Sec. 6.** RCW 82.49.030 and 2000 c 103 s 18 are each amended to read  
16 as follows:

17 (1) The excise tax imposed under this chapter is due and payable to  
18 the department of licensing or its agents at the time of registration  
19 of a vessel. The department of licensing shall not issue or renew a  
20 registration for a vessel until the tax is paid in full.

21 (2) ~~((The))~~ In calendar year 2007, one million dollars of the  
22 watercraft excise tax collected under this chapter shall be deposited  
23 into the derelict vessel removal account under RCW 79.100.100.  
24 Beginning January 1, 2008, through December 31, 2012, the first one  
25 million dollars of watercraft excise tax collected under this chapter  
26 shall be deposited in the derelict vessel removal account under RCW  
27 79.100.100. Once one million dollars has been deposited into the  
28 derelict vessel removal account the excise tax collected under this  
29 chapter shall be deposited into the general fund.

30 (3) Beginning January 1, 2013, the excise tax collected under this  
31 chapter shall be deposited in the general fund.

32 **Sec. 7.** RCW 88.02.050 and 2005 c 464 s 2 are each amended to read  
33 as follows:

34 (1) Application for a vessel registration shall be made to the  
35 department or its authorized agent in the manner and upon forms  
36 prescribed by the department. The application shall state the name and

1 address of each owner of the vessel and such other information as may  
2 be required by the department, shall be signed by at least one owner,  
3 and shall be accompanied by a vessel registration fee of ten dollars  
4 and fifty cents per year and the excise tax imposed under chapter 82.49  
5 RCW.

6 (2) Five additional dollars must be collected annually from every  
7 vessel registration application. These moneys must be distributed in  
8 the following manner:

9 (a) Two dollars must be deposited into the derelict vessel removal  
10 account established in RCW 79.100.100. If the department of natural  
11 resources indicates that the balance of the derelict vessel removal  
12 account, not including any transfer of funds into the account or funds  
13 deposited into the account collected under RCW 82.49.030 and section 9  
14 of this act, reaches one million dollars as of March 1st of any year,  
15 the collection of the two-dollar fee must be suspended for the  
16 following fiscal year.

17 (b) One dollar and fifty cents must be deposited in the aquatic  
18 invasive species prevention account created in RCW 77.12.879.

19 (c) One dollar must be deposited into the freshwater aquatic algae  
20 control account created in RCW 43.21A.667.

21 (d) Fifty cents must be deposited into the aquatic invasive species  
22 enforcement account created in RCW 43.43.400.

23 (3) Any fees required for licensing agents under RCW 46.01.140  
24 shall be in addition to the ten dollar and fifty cent annual  
25 registration fee and the five-dollar fee created in subsection (2) of  
26 this section.

27 (4) Upon receipt of the application and the registration fee, the  
28 department shall assign a registration number and issue a decal for  
29 each vessel. The registration number and decal shall be issued and  
30 affixed to the vessel in a manner prescribed by the department  
31 consistent with the standard numbering system for vessels set forth in  
32 volume 33, part 174, of the code of federal regulations. A valid decal  
33 affixed as prescribed shall indicate compliance with the annual  
34 registration requirements of this chapter.

35 (5) The vessel registrations and decals are valid for a period of  
36 one year, except that the director of licensing may extend or diminish  
37 vessel registration periods, and the decals therefor, for the purpose  
38 of staggered renewal periods. For registration periods of more or less

1 than one year, the department may collect prorated annual registration  
2 fees and excise taxes based upon the number of months in the  
3 registration period. Vessel registrations are renewable every year in  
4 a manner prescribed by the department upon payment of the vessel  
5 registration fee, excise tax, and the derelict vessel fee. Upon  
6 renewing a vessel registration, the department shall issue a new decal  
7 to be affixed as prescribed by the department.

8 (6) When the department issues either a notice to renew a vessel  
9 registration or a decal for a new or renewed vessel registration, it  
10 shall also provide information on the location of marine oil recycling  
11 tanks and sewage holding tank pumping stations. This information will  
12 be provided to the department by the state parks and recreation  
13 commission in a form ready for distribution. The form will be  
14 developed and prepared by the state parks and recreation commission  
15 with the cooperation of the department of ecology. The department, the  
16 state parks and recreation commission, and the department of ecology  
17 shall enter into a memorandum of agreement to implement this process.

18 (7) A person acquiring a vessel from a dealer or a vessel already  
19 validly registered under this chapter shall, within fifteen days of the  
20 acquisition or purchase of the vessel, apply to the department or its  
21 authorized agent for transfer of the vessel registration, and the  
22 application shall be accompanied by a transfer fee of one dollar.

23 **Sec. 8.** RCW 88.02.050 and 2002 c 286 s 13 are each amended to read  
24 as follows:

25 Application for a vessel registration shall be made to the  
26 department or its authorized agent in the manner and upon forms  
27 prescribed by the department. The application shall state the name and  
28 address of each owner of the vessel and such other information as may  
29 be required by the department, shall be signed by at least one owner,  
30 and shall be accompanied by a vessel registration fee of ten dollars  
31 and fifty cents per year and the excise tax imposed under chapter 82.49  
32 RCW. In addition, two additional dollars must be collected annually  
33 from every vessel registration application. These moneys must be  
34 deposited into the derelict vessel removal account established in RCW  
35 79.100.100. If the department of natural resources indicates that the  
36 balance of the derelict vessel removal account, not including any  
37 transfer of funds into the account or funds deposited into the account

1 collected under RCW 82.49.030 and section 9 of this act, reaches one  
2 million dollars as of March 1st of any year, the collection of the two-  
3 dollar fee must be suspended for the following fiscal year. Any fees  
4 required for licensing agents under RCW 46.01.140 shall be in addition  
5 to the ten dollar and fifty cent annual registration fee and the two-  
6 dollar derelict vessel fee.

7 Upon receipt of the application and the registration fee, the  
8 department shall assign a registration number and issue a decal for  
9 each vessel. The registration number and decal shall be issued and  
10 affixed to the vessel in a manner prescribed by the department  
11 consistent with the standard numbering system for vessels set forth in  
12 volume 33, part 174, of the code of federal regulations. A valid decal  
13 affixed as prescribed shall indicate compliance with the annual  
14 registration requirements of this chapter.

15 The vessel registrations and decals are valid for a period of one  
16 year, except that the director of licensing may extend or diminish  
17 vessel registration periods, and the decals therefor, for the purpose  
18 of staggered renewal periods. For registration periods of more or less  
19 than one year, the department may collect prorated annual registration  
20 fees and excise taxes based upon the number of months in the  
21 registration period. Vessel registrations are renewable every year in  
22 a manner prescribed by the department upon payment of the vessel  
23 registration fee, excise tax, and the derelict vessel fee. Upon  
24 renewing a vessel registration, the department shall issue a new decal  
25 to be affixed as prescribed by the department.

26 When the department issues either a notice to renew a vessel  
27 registration or a decal for a new or renewed vessel registration, it  
28 shall also provide information on the location of marine oil recycling  
29 tanks and sewage holding tank pumping stations. This information will  
30 be provided to the department by the state parks and recreation  
31 commission in a form ready for distribution. The form will be  
32 developed and prepared by the state parks and recreation commission  
33 with the cooperation of the department of ecology. The department, the  
34 state parks and recreation commission, and the department of ecology  
35 shall enter into a memorandum of agreement to implement this process.

36 A person acquiring a vessel from a dealer or a vessel already  
37 validly registered under this chapter shall, within fifteen days of the

1 acquisition or purchase of the vessel, apply to the department or its  
2 authorized agent for transfer of the vessel registration, and the  
3 application shall be accompanied by a transfer fee of one dollar.

4 NEW SECTION. **Sec. 9.** A new section is added to chapter 88.02 RCW  
5 to read as follows:

6 (1) In order to address the significant backlog of derelict vessels  
7 that have accumulated in our state's waters that pose a threat to the  
8 health and safety of the people and to our environment, the legislature  
9 intends to collect a derelict vessel removal surcharge.

10 (2) In addition to the fees collected under RCW 88.02.050, the  
11 department shall collect an annual derelict vessel removal surcharge of  
12 one dollar effective with vessel registrations that are due or will  
13 become due on or after January 1, 2008. The revenue generated from the  
14 derelict vessel surcharge must be deposited into the derelict vessel  
15 removal account established under RCW 79.100.100, and is to be used  
16 only for the removal of vessels that are less than seventy-five feet in  
17 length.

18 (3) This section expires January 1, 2014.

19 NEW SECTION. **Sec. 10.** (1) The department of natural resources, in  
20 consultation with the department of revenue, the department of  
21 licensing, and other appropriate stakeholder groups, shall examine:

22 (a) The costs and benefits of extending a derelict vessel removal  
23 fee or surcharges to vessels that are not subject to RCW 88.02.050; and

24 (b) The use of alternative revenue sources, such as the watercraft  
25 excise tax, in order to more equitably distribute the financial  
26 responsibility of supporting the cost of the derelict vessel program.  
27 The departments shall submit a report of the findings to the  
28 appropriate policy and fiscal committees of the legislature by November  
29 1, 2007.

30 (2) The department of natural resources, the department of ecology,  
31 representatives from the ship demolition industry, and representatives  
32 from the environmental community shall convene a work group to discuss  
33 operations and permitting requirements surrounding the demolition and  
34 disposal of large abandoned and derelict vessels. The department of  
35 natural resources shall consider the findings of the work group when  
36 updating the guidelines for the derelict vessel program.

1        NEW SECTION.   **Sec. 11.**   Section 7 of this act expires June 30,  
2   2012.

3        NEW SECTION.   **Sec. 12.**   Section 8 of this act takes effect June 30,  
4   2012.

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