
HOUSE BILL 1322

State of Washington

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2011 Regular Session

By Representatives Fitzgibbon, Hinkle, Tharinger, Appleton, Van De Wege, Green, Sells, Jenkins, Rolfes, Lytton, Blake, Upthegrove, Warnick, Ryu, Moscoso, Hunt, Stanford, and Kenney; by request of Commissioner of Public Lands

Read first time 01/19/11. Referred to Committee on Judiciary.

1 AN ACT Relating to abandoned or derelict vessels; and amending RCW
2 79.100.110, 79.100.130, 53.08.320, and 79.100.030.

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

4 **Sec. 1.** RCW 79.100.110 and 2006 c 153 s 1 are each amended to read
5 as follows:

6 A person who knowingly causes a vessel to sink, break up, or block
7 navigation channels, or to become abandoned or derelict upon aquatic
8 lands, or to contaminate the environment is guilty of a misdemeanor.

9 **Sec. 2.** RCW 79.100.130 and 2007 c 342 s 3 are each amended to read
10 as follows:

11 A marina owner may contract with a local government for the purpose
12 of participating in the derelict vessel removal program. The local
13 government shall serve as the authorized public entity for the removal
14 of the derelict or abandoned vessel from the marina owner's property.
15 The contract must provide for the marina owner to be financially
16 responsible for the removal costs that are not reimbursed by the
17 department as provided under RCW 79.100.100, and any additional
18 reasonable administrative costs incurred by the local government during

1 the removal of the derelict or abandoned vessel. Prior to the
2 commencement of any removal which will seek reimbursement from the
3 derelict vessel removal program, the contract and the proposed vessel
4 removal shall be submitted to the department for review and approval.
5 The local government shall use the procedure specified under RCW
6 79.100.100(6).

7 **Sec. 3.** RCW 53.08.320 and 2002 c 286 s 23 are each amended to read
8 as follows:

9 A moorage facility operator may adopt all rules necessary for
10 rental and use of moorage facilities and for the expeditious collection
11 of port charges. The rules may also establish procedures for the
12 enforcement of these rules by port district, city, county, metropolitan
13 park district or town personnel. The rules shall include the
14 following:

15 (1) Procedures authorizing moorage facility personnel to take
16 reasonable measures, including the use of chains, ropes, and locks, or
17 removal from the water, to secure vessels within the moorage facility
18 so that the vessels are in the possession and control of the moorage
19 facility operator and cannot be removed from the moorage facility.
20 These procedures may be used if an owner mooring or storing a vessel at
21 the moorage facility fails, after being notified that charges are owing
22 and of the owner's right to commence legal proceedings to contest that
23 such charges are owing, to pay the port charges owed or to commence
24 legal proceedings. Notification shall be by registered mail to the
25 owner at his or her last known address. In the case of a transient
26 vessel, or where no address was furnished by the owner, the moorage
27 facility operator need not give such notice prior to securing the
28 vessel. At the time of securing the vessel, an authorized moorage
29 facility employee shall attach to the vessel a readily visible notice.
30 The notice shall be of a reasonable size and shall contain the
31 following information:

32 (a) The date and time the notice was attached;

33 (b) A statement that if the account is not paid in full within
34 ninety days from the time the notice is attached, the vessel may be
35 sold at public auction to satisfy the port charges; and

36 (c) The address and telephone number where additional information
37 may be obtained concerning release of the vessel.

1 After a vessel is secured, the operator shall make a reasonable
2 effort to notify the owner by registered mail in order to give the
3 owner the information contained in the notice.

4 (2) Procedures authorizing moorage facility personnel at their
5 discretion to move moored vessels ashore for storage within properties
6 under the operator's control or for storage with private persons under
7 their control as bailees of the moorage facility, if the vessel is, in
8 the opinion of port personnel a nuisance, if the vessel is in danger of
9 sinking or creating other damage, or is owing port charges. Costs of
10 any such procedure shall be paid by the vessel's owner. If the owner
11 is not known, or unable to reimburse the moorage facility operator for
12 the costs of these procedures, the mooring facility operators may seek
13 reimbursement of ((~~seventy-five~~)) ninety percent of all reasonable and
14 auditable costs from the derelict vessel removal account established in
15 RCW 79.100.100.

16 (3) If a vessel is secured under subsection (1) of this section or
17 moved ashore under subsection (2) of this section, the owner who is
18 obligated to the moorage facility operator for port charges may regain
19 possession of the vessel by:

20 (a) Making arrangements satisfactory with the moorage facility
21 operator for the immediate removal of the vessel from the moorage
22 facility or for authorized moorage; and

23 (b) Making payment to the moorage facility operator of all port
24 charges, or by posting with the moorage facility operator a sufficient
25 cash bond or other acceptable security, to be held in trust by the
26 moorage facility operator pending written agreement of the parties with
27 respect to payment by the vessel owner of the amount owing, or pending
28 resolution of the matter of the charges in a civil action in a court of
29 competent jurisdiction. After entry of judgment, including any
30 appeals, in a court of competent jurisdiction, or after the parties
31 reach agreement with respect to payment, the trust shall terminate and
32 the moorage facility operator shall receive so much of the bond or
33 other security as is agreed, or as is necessary to satisfy any
34 judgment, costs, and interest as may be awarded to the moorage facility
35 operator. The balance shall be refunded immediately to the owner at
36 his or her last known address.

37 (4) If a vessel has been secured by the moorage facility operator
38 under subsection (1) of this section and is not released to the owner

1 under the bonding provisions of this section within ninety days after
2 notifying or attempting to notify the owner under subsection (1) of
3 this section, the vessel shall be conclusively presumed to have been
4 abandoned by the owner.

5 (5) If a vessel moored or stored at a moorage facility is
6 abandoned, the moorage facility operator may, by resolution of its
7 legislative authority, authorize the public sale of the vessel by
8 authorized personnel to the highest and best bidder for cash as
9 prescribed by this subsection (5). Either a minimum bid may be
10 established or a letter of credit may be required, or both, to
11 discourage the future reabandonment of the vessel.

12 (a) Before the vessel is sold, the owner of the vessel shall be
13 given at least twenty days' notice of the sale in the manner set forth
14 in subsection (1) of this section if the name and address of the owner
15 is known. The notice shall contain the time and place of the sale, a
16 reasonable description of the vessel to be sold, and the amount of port
17 charges owed with respect to the vessel. The notice of sale shall be
18 published at least once, more than ten but not more than twenty days
19 before the sale, in a newspaper of general circulation in the county in
20 which the moorage facility is located. Such notice shall include the
21 name of the vessel, if any, the last known owner and address, and a
22 reasonable description of the vessel to be sold. The moorage facility
23 operator may bid all or part of its port charges at the sale and may
24 become a purchaser at the sale.

25 (b) Before the vessel is sold, any person seeking to redeem an
26 impounded vessel under this section may commence a lawsuit in the
27 superior court for the county in which the vessel was impounded to
28 contest the validity of the impoundment or the amount of the port
29 charges owing. Such lawsuit must be commenced within ten days of the
30 date the notification was provided pursuant to subsection (1) of this
31 section, or the right to a hearing shall be deemed waived and the owner
32 shall be liable for any port charges owing the moorage facility
33 operator. In the event of litigation, the prevailing party shall be
34 entitled to reasonable attorneys' fees and costs.

35 (c) The proceeds of a sale under this section shall first be
36 applied to the payment of port charges. The balance, if any, shall be
37 paid to the owner. If the owner cannot in the exercise of due
38 diligence be located by the moorage facility operator within one year

1 of the date of the sale, the excess funds from the sale shall revert to
2 the derelict vessel removal account established in RCW 79.100.100. If
3 the sale is for a sum less than the applicable port charges, the
4 moorage facility operator is entitled to assert a claim for a
5 deficiency.

6 (d) In the event no one purchases the vessel at a sale, or a vessel
7 is not removed from the premises or other arrangements are not made
8 within ten days of sale, title to the vessel will revert to the moorage
9 facility operator.

10 (6) The rules authorized under this section shall be enforceable
11 only if the moorage facility has had its tariff containing such rules
12 conspicuously posted at its moorage facility at all times.

13 **Sec. 4.** RCW 79.100.030 and 2002 c 286 s 4 are each amended to read
14 as follows:

15 (1) An authorized public entity has the authority, subject to the
16 processes and limitations of this chapter, to store, strip, use,
17 auction, sell, salvage, scrap, or dispose of an abandoned or derelict
18 vessel found on or above aquatic lands within the jurisdiction of the
19 authorized public entity. A vessel disposal must be done in an
20 environmentally sound manner and in accordance with all federal, state,
21 and local laws, including the state solid waste disposal provisions
22 provided for in chapter 70.95 RCW. Scuttling or sinking of a vessel is
23 only permissible after obtaining the express permission of the owner or
24 owners of the aquatic lands below where the scuttling or sinking would
25 occur, and obtaining all necessary state and federal permits or
26 licenses.

27 (2) The primary responsibility to remove a derelict or abandoned
28 vessel belongs to the owner, operator, or lessee of the moorage
29 facility or the aquatic lands where the vessel is located. If the
30 authorized public entity with the primary responsibility is unwilling
31 or unable to exercise the authority granted by this section, it may
32 request the department to assume the authorized public entity's
33 authority for a particular vessel. The department may at its
34 discretion assume the authorized public entity's authority for a
35 particular vessel after being requested to do so. For vessels not at
36 a moorage facility, an authorized public entity with jurisdiction over

1 the aquatic lands where the vessel is located may, at its discretion,
2 request to assume primary responsibility for that particular vessel
3 from the owner of the aquatic lands where the vessel is located.

4 (3) The authority granted by this chapter is permissive, and no
5 authorized public entity has a duty to exercise the authority. No
6 liability attaches to an authorized public entity that chooses not to
7 exercise this authority. An authorized public entity, in the good
8 faith performance of the actions authorized under this chapter, is not
9 liable for civil damages resulting from any act or omission in the
10 performance of the actions other than acts or omissions constituting
11 gross negligence or willful or wanton misconduct. Any person whose
12 assistance has been requested by an authorized public entity, who has
13 entered into a written agreement pursuant to RCW 79.100.070, and who,
14 in good faith, renders assistance or advice with respect to activities
15 conducted by an authorized public entity pursuant to this chapter, is
16 not liable for civil damages resulting from any act or omission in the
17 rendering of the assistance or advice, other than acts or omissions
18 constituting gross negligence or willful or wanton misconduct.

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