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**SUBSTITUTE SENATE BILL 5271**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Natural Resources & Marine Waters (originally sponsored by Senators Rockefeller, Swecker, Ranker, Morton, Sheldon, Delvin, Schoesler, Regala, Nelson, Fraser, Kilmer, Shin, and Kline; by request of Commissioner of Public Lands)

READ FIRST TIME 02/08/11.

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

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

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

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

9 (2) A person who intentionally, through action or inaction and  
10 without authorization, causes a vessel to sink, break up, or block a  
11 navigational channel is guilty of a misdemeanor.

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

14 A marina owner may contract with a local government for the purpose  
15 of participating in the derelict vessel removal program. The local  
16 government shall serve as the authorized public entity for the removal  
17 of the derelict or abandoned vessel from the marina owner's property.  
18 The contract must provide for the marina owner to be financially

1 responsible for the removal costs that are not reimbursed by the  
2 department as provided under RCW 79.100.100, and any additional  
3 reasonable administrative costs incurred by the local government during  
4 the removal of the derelict or abandoned vessel. Prior to the  
5 commencement of any removal which will seek reimbursement from the  
6 derelict vessel removal program, the contract and the proposed vessel  
7 removal shall be submitted to the department for review and approval.  
8 The local government shall use the procedure specified under RCW  
9 79.100.100(6).

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

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

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

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

36 (b) A statement that if the account is not paid in full within

1 ninety days from the time the notice is attached, the vessel may be  
2 sold at public auction to satisfy the port charges; and

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

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

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

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

24 (a) Making arrangements satisfactory with the moorage facility  
25 operator for the immediate removal of the vessel from the moorage  
26 facility or for authorized moorage; and

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

1 judgment, costs, and interest as may be awarded to the moorage facility  
2 operator. The balance shall be refunded immediately to the owner at  
3 his or her last known address.

4 (4) If a vessel has been secured by the moorage facility operator  
5 under subsection (1) of this section and is not released to the owner  
6 under the bonding provisions of this section within ninety days after  
7 notifying or attempting to notify the owner under subsection (1) of  
8 this section, the vessel shall be conclusively presumed to have been  
9 abandoned by the owner.

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

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

30 (b) Before the vessel is sold, any person seeking to redeem an  
31 impounded vessel under this section may commence a lawsuit in the  
32 superior court for the county in which the vessel was impounded to  
33 contest the validity of the impoundment or the amount of the port  
34 charges owing. Such lawsuit must be commenced within ten days of the  
35 date the notification was provided pursuant to subsection (1) of this  
36 section, or the right to a hearing shall be deemed waived and the owner  
37 shall be liable for any port charges owing the moorage facility

1 operator. In the event of litigation, the prevailing party shall be  
2 entitled to reasonable attorneys' fees and costs.

3 (c) The proceeds of a sale under this section shall first be  
4 applied to the payment of port charges. The balance, if any, shall be  
5 paid to the owner. If the owner cannot in the exercise of due  
6 diligence be located by the moorage facility operator within one year  
7 of the date of the sale, the excess funds from the sale shall revert to  
8 the derelict vessel removal account established in RCW 79.100.100. If  
9 the sale is for a sum less than the applicable port charges, the  
10 moorage facility operator is entitled to assert a claim for a  
11 deficiency.

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

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

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

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

33 (2) The primary responsibility to remove a derelict or abandoned  
34 vessel belongs to the owner, operator, or lessee of the moorage  
35 facility or the aquatic lands where the vessel is located. If the  
36 authorized public entity with the primary responsibility is unwilling  
37 or unable to exercise the authority granted by this section, it may

1 request the department to assume the authorized public entity's  
2 authority for a particular vessel. The department may at its  
3 discretion assume the authorized public entity's authority for a  
4 particular vessel after being requested to do so. For vessels not at  
5 a moorage facility, an authorized public entity with jurisdiction over  
6 the aquatic lands where the vessel is located may, at its discretion,  
7 request to assume primary responsibility for that particular vessel  
8 from the owner of the aquatic lands where the vessel is located.

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

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