

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5271

62nd Legislature
2011 Regular Session

Passed by the Senate April 21, 2011
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 1, 2011
YEAS 93 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 5271** 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 5271

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

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 the appropriate state, local, or federal authorization, causes
11 a vessel to sink, break up, or block a navigational channel upon
12 aquatic lands is guilty of a misdemeanor.

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

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

1 The contract must provide for the marina owner to be financially
2 responsible for the removal costs that are not reimbursed by the
3 department as provided under RCW 79.100.100, and any additional
4 reasonable administrative costs incurred by the local government during
5 the removal of the derelict or abandoned vessel. Prior to the
6 commencement of any removal which will seek reimbursement from the
7 derelict vessel removal program, the contract and the proposed vessel
8 removal shall be submitted to the department for review and approval.
9 The local government shall use the procedure specified under RCW
10 79.100.100(6).

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

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

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

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

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

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

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

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

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

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

28 (b) Making payment to the moorage facility operator of all port
29 charges, or by posting with the moorage facility operator a sufficient
30 cash bond or other acceptable security, to be held in trust by the
31 moorage facility operator pending written agreement of the parties with
32 respect to payment by the vessel owner of the amount owing, or pending
33 resolution of the matter of the charges in a civil action in a court of
34 competent jurisdiction. After entry of judgment, including any
35 appeals, in a court of competent jurisdiction, or after the parties
36 reach agreement with respect to payment, the trust shall terminate and
37 the moorage facility operator shall receive so much of the bond or
38 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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