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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO WATERS AND NAVIGATION - OBSTRUCTIONS TO NAVIGATION

Introduced By: Representatives Malik, Gallison, and Morrison

Date Introduced: February 28, 2012

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 46-6 of the General Laws entitled "Obstructions to Navigation" is
2 hereby amended by adding thereto the following sections:

3 **46-6-8.1. Legislative findings.** -- The general assembly finds that there has been an
4 increase in the number of derelict and abandoned vessels that are either grounded or anchored
5 upon publicly or privately owned submerged lands. These vessels are public nuisances and safety
6 hazards as they often pose hazards to navigation, detract from the aesthetics of Rhode Island's
7 waterways, and threaten the environment with the potential release of hazardous materials. The
8 legislature further finds that the costs associated with the disposal of derelict and abandoned
9 vessels are substantial, and that in many cases there is no way to track down the current vessel
10 owners in order to seek compensation. As a result, the costs associated with the removal of
11 derelict vessels become a burden on public entities and the taxpaying public.

12 **46-6-8.2. Definitions.** -- As used in this chapter: (1) "Abandoned vessel" means a vessel
13 that has been left, moored, or anchored in the same area without the express consent, or contrary
14 to the rules of, the owner, manager, or lessee of the tidal lands below or on which the vessel is
15 located for either a period of more than thirty (30) consecutive days or for more than a total of
16 ninety (90) days in any three hundred sixty-five (365) day period, and the vessel's owner is: (i)
17 Not known or cannot be located; or (ii) known and located but is unwilling to take control of the
18 vessel. For the purposes of this subsection (1) only, "in the same area" means within a radius of
19 five (5) miles of any location where the vessel was previously moored or anchored on tidal lands.

1 An example of an abandoned vessel shall be, but is not limited to, the following:

2 (A) Any vessel that is left unattended or has remained illegally on public property,
3 including public marinas, docks, boat launching ramps, boat yard, or mooring for more than thirty
4 (30) days.

5 (B) Any vessel that has remained on private property; including private marinas, docks or
6 boat yards for more than ninety (90) days without consent of the owner or person in control of the
7 property.

8 (C) Any vessel that has been found adrift or unattended in or upon the waters of the state
9 of Rhode Island, and is found in a condition of disrepair as to constitute a hazard or obstruction to
10 the use of the waters of the state of Rhode Island or presents a potential health or environmental
11 hazard.

12 (2) “Authorized public entity” means any of the following: The department of
13 environmental management; the department of fish and wildlife; a port district; environmental
14 police and any city, town, or county with ownership, management, or jurisdiction over the tidal
15 lands where an abandoned or derelict vessel is located.

16 (3) “Department” means the department of environmental management.

17 (4) “Derelict vessel” means the vessel’s owner is known and can be located, and exerts
18 control of a vessel that:

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

21 (ii) Has been left on private property without authorization of the owner; or
22 (iii) Has been left for a period of seven (7) consecutive days;

23 (iv) Is sunk or in danger of sinking;
24 (v) Is obstructing a waterway; and
25 (vi) Is endangering life or property.

26 (5) “Mean high water” means a line of contour representing the eighteen and six-tenths
27 (18.6) year average as determined by the metonic cycle and/or its equivalent as evidenced by the
28 records, tidal datum, and methodology of the United States Coastal Geodetic Survey within the
29 National Oceanic and Atmospheric Administration.

30 (6) “Owner” means a person, other than a lienholder, having a property interest in or title
31 to a vessel. The term includes a person entitled to use or have possession of a vessel subject to an
32 interest in another person, reserved, or created by agreement and securing payment or
33 performance of an obligation, but it does not include a lessee under a lease not intended as
34 security.

1 (7) “Tidal lands” means those lands that are below the mean high water.

2 (8) “Vessel” means every description of watercraft, other than a seaplane on the water,
3 used or capable of being used as a means of transportation on water.

4 (9) “Waters of this state” means any waters within the territorial limits of this state, and
5 the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or
6 ride to or from the shore of this state.

7 **46-6-8.3. Use or disposal of vessel.** – (a) After taking custody of a vessel, the authorized
8 public entity may use or dispose of the vessel in any appropriate and environmentally sound
9 manner without further notice to any owners, but must give preference to uses that derive some
10 monetary benefit from the vessel, either in whole or in scrap. If no value can be derived from the
11 vessel, the authorized public entity must give preference to the least costly, environmentally
12 sound, reasonable disposal option.

13 (b) If the authorized public entity chooses to offer the vessel at public auction, either a
14 minimum bid may be set or a letter of credit may be required, or both, to discourage future
15 reabandonment of the vessel.

16 (c) Proceeds derived from the sale of the vessel must first be applied to any
17 administrative costs that are incurred by the authorized public entity during the notification
18 procedures set forth in section 46-6-9, removal and disposal costs, and costs associated with
19 environmental damages directly or indirectly caused by the vessel. If the proceeds derived from
20 the vessel exceed all administrative costs, removal and disposal costs, and costs associated with
21 environmental damages directly or indirectly caused by the vessel, the remaining moneys must be
22 applied to satisfying any liens registered against the vessel.

23 (d) Any value derived from a vessel greater than all liens and costs incurred reverts to the
24 derelict vessel removal account established in section 46-6-8.4.

25 **46-6-8.4. Derelict vessel removal account.** -- (a) The derelict vessel removal account is
26 created in the state treasury. All receipts from section 46-6-12 and those moneys specified in
27 sections 46-8-5 and 46-22.1 must be deposited into the account. The account is authorized to
28 receive fund transfers and appropriations from the general fund, deposits from the derelict vessel
29 removal surcharge, and moneys from boat registration per sections 46-8-5 and 46-22.1.
30 Expenditures from the account shall be used by the department to reimburse authorized public
31 entities for up to ninety percent (90%) of the total reasonable and auditable administrative,
32 removal, disposal, and environmental damage costs of abandoned or derelict vessels when the
33 previous owner is either unknown after a reasonable search effort or insolvent. Reimbursement
34 shall not be made unless the department determines that the public entity has made reasonable

1 efforts to identify and locate the party responsible for the vessel, regardless of the title of owner
2 of the vessel. Funds in the account resulting from transfers from the general fund or from the
3 deposit of funds from the boat registration fees as provided for under sections 46-8-5 and 46-22.1,
4 shall be used to reimburse one hundred percent (100%) of these costs and should be prioritized
5 for the removal of large vessels.

6 (b) Priority for use of this account is for the removal of derelict and abandoned vessels
7 that are in danger of sinking, breaking up, or blocking navigation channels, or that present
8 environmental risks such as leaking fuel or other hazardous substances. The department must
9 develop criteria, in the form of guidelines, to prioritize removal projects associated with this
10 chapter, but may not consider whether the applicant is a state or local entity when prioritizing.
11 The guidelines must also include guidance to the authorized public entities as to what removal
12 activities and associated costs are reasonable and eligible for reimbursement.

13 (c) The department must keep all authorized public entities apprised of the balance of the
14 derelict vessel removal account and the funds available for reimbursement. The guidelines
15 developed by the department must also be made available to the other authorized public entities.
16 This subsection (c) must be satisfied by utilizing the least costly method, including maintaining
17 the information on the department's Internet website, or any other cost-effective method.

18 (d) An authorized public entity may contribute ten percent (10%) of costs that are not
19 eligible for reimbursement by using in-kind services, including the use of existing staff,
20 equipment, and volunteers.

21 (e) This chapter does not guarantee reimbursement for an authorized public entity.
22 Authorized public entities seeking certainly in reimbursement prior to taking action under this
23 chapter may first notify the department of their proposed action and the estimated total costs.
24 Upon notification by an authorized public entity, the department must make the authorized public
25 assistance and assure reimbursement for up to two (2) years following the removal action if an
26 assurance is appropriate given the balance of the fund and the details of the proposed action.

27 **46-6-17. Severability.** – The provisions of this chapter shall be severable and, if any of
28 the provisions shall be held invalid, the decision of the court respecting that provision or
29 provisions shall not affect the validity of any other provision which can be given effect without
30 that invalid provision.

31 SECTION 2. Section 46-6-9 of the General Laws in Chapter 46-6 entitled "Obstructions
32 to Navigation" is hereby amended to read as follows:

33 **46-6-9. Notice to owner to remove obstruction -- Penalty.** -- (a) If any person resident
34 or being in the United States is known to the director as the owner of a vessel, or any interest

1 therein, or as having or exercising any control over the vessel as master, agent, insurer, or
2 otherwise, or, in case of any other unlawful or unauthorized obstruction, as having alone or with
3 others built, deposited, or caused the obstruction, or as owning, maintaining, or using the
4 obstruction in whole or in part, the director shall give notice in writing to the owner or other
5 person to remove the vessel or other obstruction within thirty (30) days of the date of the notice,
6 or such extension of time as may be granted by the director.

7 (b) It shall be deemed a sufficient notice to all owners and other persons, if served upon
8 any one or more of them by the director, or by the director's order, by delivering the notice in
9 hand, or by leaving it at the usual place of business, residence, or abode, or by duly mailing it to
10 the post office address of the owner or other person on whom the notice is to be served.

11 (c) Failure to comply with the notice shall result in a fine of one hundred dollars (\$100)
12 per day until the obstruction is removed.

13 (d)(1) If a vessel is: (i) In immediate danger of sinking, breaking up, or blocking
14 navigational channels; or (ii) Poses a reasonably imminent threat to human health or safety,
15 including a threat to environmental contamination; and (iii) The owner of the vessel cannot be
16 located or is unwilling or unable to assume immediate responsibility for the vessel, any
17 authorized public entity may tow, beach, or otherwise take temporary possession of the vessel.

18 (e) Before taking temporary possession of the vessel, the authorized public entity must
19 make reasonable attempts to consult with the department of the United States Coast Guard to
20 ensure that other remedies are not available. The basis for taking temporary possession of the
21 vessel must be set out in writing by the authorized public entity within seven (7) days of taking
22 action and be submitted to the owner, if known, as soon thereafter as reasonable. If the authorized
23 public entity has not already provided the required notice, immediately after taking possession of
24 the vessel, the authorized public entity must initiate the notice provisions in subsection 46-6-9(a)
25 of this section. The authorized public entity must complete the notice requirements of subsection
26 (a) of this section before using or disposing of the vessel as authorized in section 46-6-8.3.

27 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO WATERS AND NAVIGATION - OBSTRUCTIONS TO NAVIGATION

1 This act would allow the authorized public entity to use or dispose of derelict or
2 abandoned vessels without further notice to any owners. Preference is to a use which would
3 derive some monetary benefit from the vessel.

4 This act would take effect upon passage.

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