

SENATE BILL REPORT

SSB 5273

As Amended by House, March 28, 2021

Title: An act relating to the replacement of shoreline armoring.

Brief Description: Concerning the replacement of shoreline armoring.

Sponsors: Senate Committee on Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Salomon, Rolfes, Pedersen, Das, Lovelett and Nobles).

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/26/21, 2/04/21 [DPS, DNP].

Floor Activity: Passed Senate: 2/18/21, 28-21.
Passed House: 3/28/21, 57-40.

Brief Summary of First Substitute Bill

- Requires a person replacing a residential marine bulkhead to use the least impacting technically feasible bank protection alternative for the protection of fish life.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 5273 be substituted therefor, and the substitute bill do pass.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Rolfes and Stanford.

Minority Report: Do not pass.

Signed by Senators Warnick, Ranking Member; Honeyford and Short.

Staff: Jeff Olsen (786-7428)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Construction activities related to bulkheads or bank protection structures are subject to various state environmental regulations and may require environmental permits such as shoreline substantial development permits issued under the Shoreline Management Act and Hydraulic Project Approvals (HPA) issued by the Washington Department of Fish and Wildlife (WDFW). An HPA is required for any project that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. HPAs are issued by WDFW to ensure the proper protection of fish life.

Hydraulic projects may not be unreasonably conditioned and the conditions imposed upon obtaining a HPA must reasonably relate to the project. WDFW may not impose conditions that attempt to optimize fish life that are out of proportion to the impact of the proposed project.

Summary of First Substitute Bill: When replacing residential marine shoreline stabilization or armoring, a person must use the least impacting technically feasible bank protection alternative for the protection of fish life. A hard armor technique should only be proposed after considering site characteristics including the threat to major improvements, wave energy, and other factors in an alternative's analysis. The common alternatives in order of preference include:

- remove the structure and restore the beach;
- remove the structure and install native vegetation;
- remove the structure and control upland drainage;
- remove the structure and replace it with a soft structure constructed of natural materials, including bioengineering;
- remove the hard structure and construct upland retaining walls;
- remove the hard structure and replace it with a hard structure located landward of the existing structure; or
- remove the hard structure and replace it with hard shoreline structure in the same footprint as the existing structure.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: One-third of the shoreline habitat has been destroyed by bulkheads in Puget Sound. Nearshore habitat is critical for forage fish and the entire food web, including salmon and orcas. Shoreline armor prevents beaches from replenishing sand and other nutrients. Replacement of shoreline armoring ensures another 40 years of habitat degradation. Due to climate change and rising sea levels,

ordinary high water line should be replaced with highest tide line. Current law allows a bulkhead to be replaced with the same structure. By using the least impactful alternative, the process will be in line with local shoreline alternatives analysis being used by many local governments. There is more shoreline armor being built or replaced than removed, leaving Washington below target for accomplishing a net gain in habitat improvement.

CON: Current strategies to provide incentives for homeowners to use soft armoring are working. In some cases alternatives can be cost prohibitive, and language should be added similar to last year to make sure projects are feasible. The bill as written will cause unintended consequences by handing standards over to regulators. Regulators will deny projects. Landowners have a right to replace bulkheads, and this will result in many more appeals. The bill needs to define feasibility and costs, and their needs to be protections for single family homes.

OTHER: Hard armoring of shorelines damages the nearshore environment, and there are green alternatives that may be more effective. The bill could use technical amendments to ensure consistency with WDFW rulemaking on this topic.

Persons Testifying: PRO: Senator Jesse Salomon, Prime Sponsor; Margarita Franchesca Perez, Stillaguamish Tribe of Indians; Margen Carlson, Washington Department of Fish and Wildlife; Jeff Parsons, Puget Sound Partnership; Darcy Nonemacher, Washington Conservation Voters.

CON: Josie Cummings, Building Industry Association of Washington; Duncan Greene, Association of Washington Business and Van Ness Feldman LLP.

OTHER: Bruce Wishart, Sound Action.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

Defines "feasible," with regard to the replacement of residential marine shoreline stabilization or armoring, to mean available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.