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**HOUSE BILL 1378**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Reeves, Dent, Berry, Ramel, Gregerson, and Leavitt; by request of Department of Natural Resources

AN ACT Relating to derelict aquatic structures; amending RCW 43.21B.110 and 43.21B.305; and adding a new chapter to Title 79 RCW.

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

NEW SECTION. **Sec.**  FINDINGS. The legislature finds that nearshore habitat is amongst the most important for threatened and endangered species of salmon, yet nearshore habitat in populated areas is often negatively impacted by man-made structures. There is a growing problem where aquatic or over-water structures become derelict or fall into disrepair. These derelict aquatic structures are public nuisances and safety hazards as they can pose risks to navigation, harm nearshore habitat for threatened and endangered species, detract from the aesthetics of Washington's waterfronts, and threaten the environment with the potential release of hazardous materials. The legislature further finds that the costs associated with the proper removal or repair of derelict aquatic structures are substantial, and that in many cases owners of these structures lack the financial means to address the safety and environmental hazards the structures pose. As a result, the costs associated with the removal or repair of derelict structures becomes a burden on public entities and the taxpaying public. The legislature also finds that removal of derelict aquatic structures and restoration of surrounding habitat improves nearshore habitat quality.

NEW SECTION. **Sec.**  DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the state and lands owned by other public or private entities.

(2) "Authorized public entity" includes any of the following: The department of natural resources; state agencies, and any city, town, or county with ownership, management, or jurisdiction over the aquatic lands where derelict aquatic structure is located.

(3) "Department" means the department of natural resources.

(4) "Derelict aquatic structure" means over-water and in-water structures where, as a result of catastrophic damage or disuse or neglect, conditions exist that make the structure unsafe for use, pose a hazard, or pose risks to public health or safety or the surrounding environment. Factors that indicate an aquatic structure is derelict include, but are not limited to, structures that:

(a) Are unoccupied and unsecured;

(b) Are partially constructed;

(c) Are abandoned or an attractive nuisance;

(d) Are at risk of partial or full collapse;

(e) Are dilapidated by being in a state of disrepair due to catastrophic damage or disuse or neglect;

(f) Have received a notice from a building or safety authority with jurisdiction that identified structural defects that prohibit the structure from being used; or

(g) Increase the risk of fire, accident, or environmental harm.

(5) "Owner" means any natural person, firm, partnership, corporation, association, government entity, or organization that has a lawful right to possession of a structure by purchase, exchange, gift, lease, inheritance, or legal action whether or not the structure is subject to a security interest.

NEW SECTION. **Sec.**  AUTHORITY OF AUTHORIZED PUBLIC ENTITY—OWNER RETAINS PRIMARY RESPONSIBILITY—LIMITATION ON CIVIL LIABILITY. (1) An authorized public entity has the authority, subject to the processes and limitations of this chapter, to remove, salvage, scrap, or dispose of a derelict aquatic structure found on or above aquatic lands within the jurisdiction of the authorized public entity. Any removal and disposal must be done in an environmentally sound manner and in accordance with all federal, state, and local laws, including the state solid waste disposal provisions provided for in chapter 70A.205 RCW.

(2) The primary responsibility to remove a derelict aquatic structure belongs to the owner or lessee of the structure, and secondarily to the authorized public entity with jurisdiction over the aquatic lands on which the structure lies. If the authorized public entity with the secondary responsibility is unwilling or unable to exercise the authority granted by this section, it may request the department to assume the authorized public entity's authority for a particular structure. The department may at its discretion assume the authorized public entity's authority for a particular structure after being requested to do so.

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

NEW SECTION. **Sec.**  OBTAINING POSSESSION OF STRUCTURE. (1) Prior to exercising the authority granted in section 3 of this act, the authorized public entity must first obtain possession of the structure. To do so, the authorized public entity must:

(a) Mail notice of its intent to obtain possession, at least 20 days prior to taking possession, to the last known address of the previous owner and to any lienholders or secured interests on record. A notice need not be sent to the purported owner or any other person whose interest in the structure is not recorded with a state or local jurisdiction;

(b) Post notice of its intent clearly on the structure for 30 days and publish its intent at least once, more than 10 days but less than 20 days prior to taking possession, in a newspaper of general circulation for the county in which the structure is located; and

(c) Post notice of its intent on the department's internet website on a page specifically designated for such notices. If the authorized public entity is not the department, the department must facilitate the internet posting.

(2) All notices sent, posted, or published in accordance with this section must, at a minimum, contain a description of the structure sufficient for identification, a statement of the reason or reasons why the structure has been posted, and explain the intent of the authorized public entity to take possession of the structure, the rights of the authorized public entity after taking possession of the structure as provided in section 3 of this act, the procedures the owner must follow in order to avoid possession being taken by the authorized public entity, the procedures the owner must follow in order to reclaim possession after possession is taken by the authorized public entity, and the financial liabilities that the owner may incur as provided for in section 8 of this act.

(3)(a) Any authorized public entity may take temporary possession of a structure if the owner of the structure cannot be located or is unwilling or unable to assume immediate responsibility for the structure and if the structure:

(i) Is in immediate danger of collapse, breaking up, or blocking navigational channels; or

(ii) Poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination.

(b) Before taking temporary possession of the structure, the authorized public entity must make reasonable attempts to consult with the department to ensure that other remedies are not available. The basis for taking temporary possession of the structure must be set out in writing by the authorized public entity within seven days of taking action and be submitted to the owner, if known, as soon thereafter as is reasonable. If the authorized public entity has not already provided the required notice, immediately after taking possession of the structure, the authorized public entity must initiate the notice provisions in subsection (1) of this section. The authorized public entity must complete the notice requirements of subsection (1) of this section before using or disposing of the structure as authorized in section 5 of this act.

NEW SECTION. **Sec.**  DISPOSAL OF STRUCTURE. (1) After taking possession of a structure, the authorized public entity may dispose of the structure in any appropriate and environmentally sound manner without further notice to any owners.

(2) The authorized public entity must give preference to the least costly, environmentally sound, reasonable disposal option. Any disposal operations must be consistent with the requirements of all permitting authorities and state solid waste disposal provisions provided for in chapter 70A.205 RCW.

NEW SECTION. **Sec.**  NEARSHORE CREDITS PROGRAM. (1) The department shall also submit all qualifying derelict aquatic structure removal projects or project elements to the Puget Sound partnership nearshore credits program to generate conservation credits to help federal permit applicants meet obligations to offset impacts from their aquatic projects.

(2) Any payments or revenues the department receives from the sale of credits in the nearshore credits program shall be directed to the derelict structure removal account.

NEW SECTION. **Sec.**  DERELICT STRUCTURE REMOVAL ACCOUNT. (1)(a) The derelict structure removal account is created in the state treasury. All receipts from and those moneys specified must be deposited into the account. The account is authorized to receive fund transfers and appropriations from the general fund, deposits from the derelict structure removal surcharge, as well as gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this chapter and expend the same or any income according to the terms of the gifts, grants, or endowments provided those terms do not conflict with any provisions of this section or any guidelines developed to prioritize reimbursement of removal projects associated with this chapter.

(b) Moneys in the account may only be spent after appropriation. Expenditures from the account may only be used by the department to reimburse authorized public entities for up to 90 percent of the total reasonable and auditable administrative, removal, disposal, and environmental damage costs of derelict aquatic structures when the previous owner is either unknown after a reasonable search effort or insolvent. Reimbursement may not be made unless the department determines that the authorized public entity has made reasonable efforts to identify and locate the party responsible for the structure.

(c) Funds in the account resulting from transfers from the general fund should be prioritized for the removal of large structures.

(d) In each biennium, up to 20 percent of the expenditures from the account may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter.

(2) Priority for use of this account is for the removal of derelict structures that are in danger of collapsing, breaking up, or blocking navigation channels, or that present environmental risks or significant habitat impacts. The department must develop criteria, in the form of informal guidelines, to prioritize removal projects associated with this chapter, but may not consider whether the applicant is a state or local entity when prioritizing. The guidelines must also include guidance to the authorized public entities as to what removal activities and associated costs are reasonable and eligible for reimbursement.

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

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

(5) This chapter does not guarantee reimbursement for an authorized public entity. Authorized public entities seeking certainty in reimbursement prior to taking action under this chapter may first notify the department of their proposed action and the estimated total costs. Upon notification by an authorized public entity, the department must make the authorized public entity aware of the status of the account and the likelihood of reimbursement being available. The department may offer technical assistance and assure reimbursement for up to two years following the removal action if an assurance is appropriate given the balance of the account and the details of the proposed action.

NEW SECTION. **Sec.**  REIMBURSEMENT FOR COSTS. (1) The owner of a derelict aquatic structure is responsible for reimbursing an authorized public entity for all reasonable and auditable costs associated with the removal or disposal of the owner's structure under this chapter. These costs include, but are not limited to, costs incurred exercising the authority granted by this chapter, all administrative costs incurred by the authorized public entity during the procedure set forth by this chapter, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the structure.

(2) Reimbursement for costs may be sought from an owner who is identified subsequent to the structure's removal and disposal.

(3) If the full amount of all costs due to the authorized public entity under this chapter is not paid to the authorized public entity within 30 days after first notifying the responsible parties of the amounts owed, the authorized public entity or the department may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorneys' fees and costs incurred by the authorized public entity.

NEW SECTION. **Sec.**  CONTRACTS WITH PRIVATE COMPANY AND INDIVIDUAL. An authorized public entity may enter into a contract with a private company or individual to carry out the authority granted in this chapter.

NEW SECTION. **Sec.**  REFURBISHING OR REPURPOSING OF AQUATIC STRUCTURES AND FACILITIES. The department may also acquire aquatic structures and facilities that do not meet the definition of derelict aquatic structures, but which could provide habitat benefits or amenities for the local community if either refurbished or repurposed, or both. The department may partner with an authorized public entity, tribal nation or corporation, or nonprofit group to refurbish or repurpose an aquatic structure or facility.

NEW SECTION. **Sec.**  AUTHORITY TO PURCHASE. To the extent not granted under other statutes, the department is hereby granted authority to purchase, or acquire through gift, exchange, or other transfer, lands and facilities to carry out the purposes of this title.

NEW SECTION. **Sec.**  CONTESTING AN AUTHORIZED PUBLIC ENTITY'S DECISION TO TAKE TEMPORARY POSSESSION OR POSSESSION OF A STRUCTURE—CONTESTING THE AMOUNT OF REIMBURSEMENT. (1) An owner or lienholder seeking to contest an authorized public entity's decision to take temporary possession or possession of a structure under this chapter, or to contest the amount of reimbursement owed to an authorized public entity under this chapter, may request a hearing in accordance with this section.

(2)(a) If the contested decision or action was undertaken by a state agency, a written request for a hearing related to the decision or action must be filed with the pollution control hearings board and served on the state agency in accordance with RCW 43.21B.230 (2) and (3) within 30 days of the date the authorized public entity acquires possession of the structure under section 4 of this act, or if the structure is redeemed before the authorized public entity acquires possession, within 30 days of the date of redemption, or the right to a hearing is deemed waived and the structure's owner is liable for any costs owed the authorized public entity. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(b) Upon receipt of a timely hearing request, the pollution control hearings board shall proceed to hear and determine the validity of the decision to take the structure into temporary possession or possession. Within five business days after the request for a hearing is filed, the pollution control hearings board shall notify the structure owner requesting the hearing and the authorized public entity of the date, time, and location for the hearing. The pollution control hearings board shall set the hearing on a date that is within 60 days of the filing of the request for hearing.

(c) Consistent with RCW 43.21B.305, a proceeding brought under this subsection may be heard by one member of the pollution control hearings board, whose decision is the final decision of the board.

(3)(a) If the contested decision or action was undertaken by a metropolitan park district, port district, city, town, or county, which has adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned structures, those rules or procedures must be followed in order to contest a decision to take temporary possession or possession of a structure, or to contest the amount of reimbursement owed.

(b) If the metropolitan park district, port district, city, town, or county has not adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned structures, then an owner or lienholder requesting a hearing under this section must follow the procedure established in subsection (2) of this section.

NEW SECTION. **Sec.**  GRANT PROGRAM. The department shall establish a grant program for lessees of state-owned aquatic land who need financial assistance to comply with the department's habitat stewardship measures for the protection of nearshore habitat. The department shall establish grant eligibility criteria and amounts by rule.

NEW SECTION. **Sec.**  CHAPTER NOT EXCLUSIVE. (1) This chapter is not intended to limit or constrain the ability and authority of the authorized public entities to enact and enforce ordinances or other regulations relating to derelict structures, or to take any actions authorized by federal or state law in responding to derelict or abandoned structures. This chapter is also not intended to be the sole remedy available to authorized public entities against the owners of derelict structures.

(2) The rights granted by this chapter are in addition to any other legal rights an authorized public entity may have to obtain title to, remove, recover, sell, or dispose of a derelict aquatic structure, and in no way does this chapter alter those rights, or affect the priority of other liens on a structure.

**Sec.**  RCW 43.21B.110 and 2022 c 180 s 812 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70A.15 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 or 79.--- (the new chapter created in section 17 of this act) RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70A.205.260.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70A.205 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70A.226.090.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70A.205.145.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(n) Decisions of an authorized public entity under section 4 of this act to take temporary possession or custody of a structure or to contest the amount of reimbursement owed that are reviewable by the pollution control hearings board under section 12 of this act.

(o) Decisions of the department of ecology that are appealable under RCW 70A.245.020 to set recycled minimum postconsumer content for covered products or to temporarily exclude types of covered products in plastic containers from minimum postconsumer recycled content requirements.

((~~(o)~~)) (p) Orders by the department of ecology under RCW 70A.455.080.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100, 70A.15.3110, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**Sec.**  RCW 43.21B.305 and 2013 c 291 s 44 are each amended to read as follows:

(1) In an appeal that involves a penalty of fifteen thousand dollars or less or that involves a derelict or abandoned vessel under RCW 79.100.120 or a derelict aquatic structure under section 12 of this act, the appeal may be heard by one member of the board, whose decision shall be the final decision of the board. The board shall define by rule alternative procedures to expedite appeals involving penalties of fifteen thousand dollars or less or involving a derelict or abandoned vessel or aquatic structure. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals.

(2) For appeals that involve a derelict or abandoned vessel under RCW 79.100.120 or a derelict aquatic structure under section 12 of this act only, an administrative law judge employed by the board may be substituted for a board member under this section.

NEW SECTION. **Sec.**  Sections 1 through 14 of this act constitute a new chapter in Title 79 RCW.

**--- END ---**