

SENATE BILL REPORT

SB 5433

As of January 29, 2023

Title: An act relating to derelict aquatic structures.

Brief Description: Concerning the removal of derelict aquatic structures and restoration of aquatic lands.

Sponsors: Senators Muzzall, Shewmake, Liias, Lovelett, MacEwen, Nguyen and Salomon; by request of Department of Natural Resources.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/30/23.

Brief Summary of Bill

- Establishes a derelict structure removal program at the Department of Natural Resources (DNR) for the removal of qualifying structures on state aquatic lands.
- Directs DNR to establish a grant program for lessees of state-owned aquatic land who need financial assistance to comply with DNR's habitat stewardship measures for the protection of nearshore habitat.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Jeff Olsen (786-7428)

Background: The Department of Natural Resources (DNR) is responsible for managing state-owned aquatic lands to provide a balance of public benefits for the state. The aquatic lands that DNR manages includes tidelands, shorelands, harbors, and the lands lying beneath navigable waters. In 2004, DNR created the Creosote Removal Program to help fund public and private community restoration projects to remove creosote-treated

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.

debris and pilings on or adjacent to state-owned aquatic lands.

The Puget Sound Partnership Nearshore Credits Program sells conservation credits to help federal permit applicants meet obligations to offset impacts to critical habitat and uses funds from those credit sales to implement equivalent conservation projects. It is administered by the Puget Sound Partnership in collaboration with the Washington State Recreation and Conservation Office, and receives technical assistance from the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): DNR is granted authority to remove, salvage, or repurpose a derelict aquatic structure found on or above aquatic lands within DNR's jurisdiction. A derelict aquatic structure includes overwater 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 structures that:

- are unsecured, abandoned, and partially constructed;
- are at risk of partial or full collapse;
- are dilapidated by being in a state of disrepair due to catastrophic damage or disuse or neglect;
- have received a notice from a building or safety authority with jurisdiction that identified structural defects that prohibit the structure from being used;
- increase the risk of fire, accident, or environmental harm; or
- otherwise represent a risk to public or environmental health or safety.

Derelict aquatic structures will be disposed of by DNR, or an approved contractor, in any appropriate and environmentally sound manner and consistent with all local, state, and federal requirements. When disposing derelict aquatic structures, preference must be given to the least costly, environmentally sound, reasonable disposal option. DNR may contract with a private company, individuals, tribal nation, or state and local government agencies to remove derelict aquatic structures. The primary responsibility to remove a derelict aquatic structure belongs to the owner or lessee of the structure, and secondarily to DNR when it has jurisdiction over the aquatic lands on which the structure lies.

DNR must submit all derelict aquatic structure removal projects on lands not managed by a port district to the Puget Sound Partnership Nearshore Credits Program to help federal permit applicants meet obligations to offset impacts from their aquatic projects. Any payments or revenues DNR receives from the sale of credits in the nearshore credits program or other similar mitigation credit program must be directed to the Derelict Structure Removal Account.

The Derelict Structure Removal Account is created in the state treasury. Priority for use of

the account is for the removal, remediation, and revitalization of derelict aquatic structures that are in danger of collapsing, breaking up, or blocking navigation channels, or that present environmental risks or significant habitat impacts. Funds in the account resulting from transfers from the general fund should be prioritized for the removal of large structures. DNR must develop criteria to prioritize removal projects by January 1, 2024, but may not consider whether the applicant is a state or local entity.

DNR must establish a grant program for lessees of state-owned aquatic land who need financial assistance to comply with DNR's habitat stewardship measures for protection of nearshore habitat. DNR shall establish grant eligibility criteria and amounts by July 1, 2024.

DNR 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. DNR may partner with a local government, government agency, tribal nation or corporation, or nonprofit group to refurbish or repurpose an aquatic structure or facility.

The Derelict Structure Removal Program is not intended to limit or constrain the ability and authority of any entity to enact and enforce ordinances or other regulations relating to derelict aquatic structures, or to take any actions authorized by federal or state law in responding to derelict or abandoned structures. The Derelict Structure Removal Program is also not intended to be the sole remedy available to DNR against the owners of derelict aquatic structures.

Appropriation: None.

Fiscal Note: Requested on January 28, 2023.

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

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