

SENATE BILL REPORT

SB 5433

As of February 22, 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, 2/16/23 [DPS-WM].

Ways & Means: 2/22/23.

Brief Summary of First Substitute 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

Majority Report: That Substitute Senate Bill No. 5433 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Muzzall, Ranking Member; Rolfes, Shewmake, Short, Stanford, Wagoner and Warnick.

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.

Staff: Jeff Olsen (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Jed Herman (786-7346)

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 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 (First 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: Not requested.

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 First Substitute (Agriculture, Water, Natural Resources & Parks): PRO: This bill is agency request legislation and is currently a work in progress. There are questions about how the nearshore credits should be implemented.

Derelict structures pose harm to the environment, are hazards to navigation, obstruct shoreline processes, and are a visual blight. Removal of derelict structures in a safe manner will improve nearshore habitat. The DNR needs authority and resources to create a formal program. A state program would be able to partner with local governments and others to remove large derelict structures. Neah Bay has a large derelict structure that is impacting nearshore habitat. The new program could partner with others to remove high priority derelict structures. The bill also calls for a grant program to provide financial incentives for lessees to address derelict structures.

CON: This is a broad and ambiguous proposal. Removal of structures can impact habitat. Dives site have been lost due to previous projects. There needs to be more oversight of the process. Environmental cleanup is core to a port's mission. More work is needed on the bill.

OTHER: Derelict structures can harm the nearshore environment. Toxic chemicals and shade can kill vegetation. If DNR removes structures and receives credits from the Nearshore credits program, they can sell those credits to do additional removal projects.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Senator Ron Muzzall, Prime Sponsor; Alex Smith, Washington Department of Natural Resources; Bob Wise, President, Recreational Boating Assoc. of Washington; G. Chad Bowechop, Makah Tribal Council.

CON: Jeff Pack, NW REBREATHING DIVERS.

OTHER: Don Gourlie, Puget Sound Partnership; John Stuhlmiller, Washington Public Ports Association.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: I've been modifying this bill to get it to something that I think will work. We are also looking to develop a credit program. This bill is different than the derelict vessel program, but it is similar in the fact that it is meant to deal with derelict structures similar to what we do with vessels.

Persons Testifying (Ways & Means): PRO: Senator Ron Muzzall, Prime Sponsor; Brian Considine, Washington Department of Natural Resources.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.