
SENATE BILL 5433

State of Washington

68th Legislature

2023 Regular Session

By Senators Muzzall, Shewmake, Lias, Lovelett, MacEwen, Nguyen, and Salomon; by request of Department of Natural Resources

Read first time 01/18/23. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to derelict aquatic structures; amending RCW
2 43.21B.110 and 43.21B.305; and adding a new chapter to Title 79 RCW.

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

4 NEW SECTION. **Sec. 1.** FINDINGS. The legislature finds that
5 nearshore habitat is amongst the most important for threatened and
6 endangered species of salmon, yet nearshore habitat in populated
7 areas is often negatively impacted by man-made structures. There is a
8 growing problem where aquatic or over-water structures become
9 derelict or fall into disrepair. These derelict aquatic structures
10 are public nuisances and safety hazards as they can pose risks to
11 navigation, harm nearshore habitat for threatened and endangered
12 species, detract from the aesthetics of Washington's waterfronts, and
13 threaten the environment with the potential release of hazardous
14 materials. The legislature further finds that the costs associated
15 with the proper removal or repair of derelict aquatic structures are
16 substantial, and that in many cases owners of these structures lack
17 the financial means to address the safety and environmental hazards
18 the structures pose. As a result, the costs associated with the
19 removal or repair of derelict structures becomes a burden on public
20 entities and the taxpaying public. The legislature also finds that

1 removal of derelict aquatic structures and restoration of surrounding
2 habitat improves nearshore habitat quality.

3 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
4 section apply throughout this chapter unless the context clearly
5 requires otherwise.

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

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

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

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

20 (a) Are unoccupied and unsecured;

21 (b) Are partially constructed;

22 (c) Are abandoned or an attractive nuisance;

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

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

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

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

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

35 NEW SECTION. **Sec. 3.** AUTHORITY OF AUTHORIZED PUBLIC ENTITY—
36 OWNER RETAINS PRIMARY RESPONSIBILITY—LIMITATION ON CIVIL LIABILITY.

37 (1) An authorized public entity has the authority, subject to the
38 processes and limitations of this chapter, to remove, salvage, scrap,

1 or dispose of a derelict aquatic structure found on or above aquatic
2 lands within the jurisdiction of the authorized public entity. Any
3 removal and disposal must be done in an environmentally sound manner
4 and in accordance with all federal, state, and local laws, including
5 the state solid waste disposal provisions provided for in chapter
6 70A.205 RCW.

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

17 (3) The authority granted by this chapter is permissive, and no
18 authorized public entity has a duty to exercise the authority. No
19 liability attaches to an authorized public entity that chooses not to
20 exercise this authority. An authorized public entity, in the good
21 faith performance of the actions authorized under this chapter, is
22 not liable for civil damages resulting from any act or omission in
23 the performance of the actions other than acts or omissions
24 constituting gross negligence or willful or wanton misconduct. Any
25 person whose assistance has been requested by an authorized public
26 entity, who has entered into a written agreement pursuant to section
27 9 of this act, and who, in good faith, renders assistance or advice
28 with respect to activities conducted by an authorized public entity
29 pursuant to this chapter, is not liable for civil damages resulting
30 from any act or omission in the rendering of the assistance or
31 advice, other than acts or omissions constituting gross negligence or
32 willful or wanton misconduct.

33 NEW SECTION. **Sec. 4.** OBTAINING POSSESSION OF STRUCTURE. (1)

34 Prior to exercising the authority granted in section 3 of this act,
35 the authorized public entity must first obtain possession of the
36 structure. To do so, the authorized public entity must:

37 (a) Mail notice of its intent to obtain possession, at least 20
38 days prior to taking possession, to the last known address of the
39 previous owner and to any lienholders or secured interests on record.

1 A notice need not be sent to the purported owner or any other person
2 whose interest in the structure is not recorded with a state or local
3 jurisdiction;

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

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

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

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

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

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

32 (b) Before taking temporary possession of the structure, the
33 authorized public entity must make reasonable attempts to consult
34 with the department to ensure that other remedies are not available.
35 The basis for taking temporary possession of the structure must be
36 set out in writing by the authorized public entity within seven days
37 of taking action and be submitted to the owner, if known, as soon
38 thereafter as is reasonable. If the authorized public entity has not
39 already provided the required notice, immediately after taking
40 possession of the structure, the authorized public entity must

1 initiate the notice provisions in subsection (1) of this section. The
2 authorized public entity must complete the notice requirements of
3 subsection (1) of this section before using or disposing of the
4 structure as authorized in section 5 of this act.

5 NEW SECTION. **Sec. 5.** DISPOSAL OF STRUCTURE. (1) After taking
6 possession of a structure, the authorized public entity may dispose
7 of the structure in any appropriate and environmentally sound manner
8 without further notice to any owners.

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

14 NEW SECTION. **Sec. 6.** NEARSHORE CREDITS PROGRAM. (1) The
15 department shall also submit all qualifying derelict aquatic
16 structure removal projects or project elements to the Puget Sound
17 partnership nearshore credits program to generate conservation
18 credits to help federal permit applicants meet obligations to offset
19 impacts from their aquatic projects.

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

23 NEW SECTION. **Sec. 7.** DERELICT STRUCTURE REMOVAL ACCOUNT. (1) (a)
24 The derelict structure removal account is created in the state
25 treasury. All receipts from and those moneys specified must be
26 deposited into the account. The account is authorized to receive fund
27 transfers and appropriations from the general fund, deposits from the
28 derelict structure removal surcharge, as well as gifts, grants, and
29 endowments from public or private sources as may be made from time to
30 time, in trust or otherwise, for the use and benefit of the purposes
31 of this chapter and expend the same or any income according to the
32 terms of the gifts, grants, or endowments provided those terms do not
33 conflict with any provisions of this section or any guidelines
34 developed to prioritize reimbursement of removal projects associated
35 with this chapter.

36 (b) Moneys in the account may only be spent after appropriation.
37 Expenditures from the account may only be used by the department to

1 reimburse authorized public entities for up to 90 percent of the
2 total reasonable and auditable administrative, removal, disposal, and
3 environmental damage costs of derelict aquatic structures when the
4 previous owner is either unknown after a reasonable search effort or
5 insolvent. Reimbursement may not be made unless the department
6 determines that the authorized public entity has made reasonable
7 efforts to identify and locate the party responsible for the
8 structure.

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

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

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

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

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

37 (5) This chapter does not guarantee reimbursement for an
38 authorized public entity. Authorized public entities seeking
39 certainty in reimbursement prior to taking action under this chapter
40 may first notify the department of their proposed action and the

1 estimated total costs. Upon notification by an authorized public
2 entity, the department must make the authorized public entity aware
3 of the status of the account and the likelihood of reimbursement
4 being available. The department may offer technical assistance and
5 assure reimbursement for up to two years following the removal action
6 if an assurance is appropriate given the balance of the account and
7 the details of the proposed action.

8 NEW SECTION. **Sec. 8.** REIMBURSEMENT FOR COSTS. (1) The owner of
9 a derelict aquatic structure is responsible for reimbursing an
10 authorized public entity for all reasonable and auditable costs
11 associated with the removal or disposal of the owner's structure
12 under this chapter. These costs include, but are not limited to,
13 costs incurred exercising the authority granted by this chapter, all
14 administrative costs incurred by the authorized public entity during
15 the procedure set forth by this chapter, removal and disposal costs,
16 and costs associated with environmental damages directly or
17 indirectly caused by the structure.

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

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

27 NEW SECTION. **Sec. 9.** CONTRACTS WITH PRIVATE COMPANY AND
28 INDIVIDUAL. An authorized public entity may enter into a contract
29 with a private company or individual to carry out the authority
30 granted in this chapter.

31 NEW SECTION. **Sec. 10.** REFURBISHING OR REPURPOSING OF AQUATIC
32 STRUCTURES AND FACILITIES. The department may also acquire aquatic
33 structures and facilities that do not meet the definition of derelict
34 aquatic structures, but which could provide habitat benefits or
35 amenities for the local community if either refurbished or
36 repurposed, or both. The department may partner with an authorized

1 public entity, tribal nation or corporation, or nonprofit group to
2 refurbish or repurpose an aquatic structure or facility.

3 NEW SECTION. **Sec. 11.** AUTHORITY TO PURCHASE. To the extent not
4 granted under other statutes, the department is hereby granted
5 authority to purchase, or acquire through gift, exchange, or other
6 transfer, lands and facilities to carry out the purposes of this
7 title.

8 NEW SECTION. **Sec. 12.** CONTESTING AN AUTHORIZED PUBLIC ENTITY'S
9 DECISION TO TAKE TEMPORARY POSSESSION OR POSSESSION OF A STRUCTURE—
10 CONTESTING THE AMOUNT OF REIMBURSEMENT. (1) An owner or lienholder
11 seeking to contest an authorized public entity's decision to take
12 temporary possession or possession of a structure under this chapter,
13 or to contest the amount of reimbursement owed to an authorized
14 public entity under this chapter, may request a hearing in accordance
15 with this section.

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

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

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

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

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

17 NEW SECTION. **Sec. 13.** GRANT PROGRAM. The department shall
18 establish a grant program for lessees of state-owned aquatic land who
19 need financial assistance to comply with the department's habitat
20 stewardship measures for the protection of nearshore habitat. The
21 department shall establish grant eligibility criteria and amounts by
22 rule.

23 NEW SECTION. **Sec. 14.** CHAPTER NOT EXCLUSIVE. (1) This chapter
24 is not intended to limit or constrain the ability and authority of
25 the authorized public entities to enact and enforce ordinances or
26 other regulations relating to derelict structures, or to take any
27 actions authorized by federal or state law in responding to derelict
28 or abandoned structures. This chapter is also not intended to be the
29 sole remedy available to authorized public entities against the
30 owners of derelict structures.

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

36 **Sec. 15.** RCW 43.21B.110 and 2022 c 180 s 812 are each amended to
37 read as follows:

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

9 (a) Civil penalties imposed pursuant to RCW 18.104.155,
10 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070,
11 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080,
12 70A.65.200, 70A.455.090, 76.09.170, 77.55.440, 78.44.250, 88.46.090,
13 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

14 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
15 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070,
16 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250,
17 90.48.120, and 90.56.330.

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

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

28 (e) Decisions of local health departments regarding the issuance
29 and enforcement of permits to use or dispose of biosolids under RCW
30 70A.226.090.

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

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

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

4 (i) Decisions of the department of natural resources, the
5 department of fish and wildlife, and the department that are
6 reviewable under chapter 76.09 RCW, and the department of natural
7 resources' appeals of county, city, or town objections under RCW
8 76.09.050(7).

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

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

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

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

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

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

31 (~~(o)~~) (p) Orders by the department of ecology under RCW
32 70A.455.080.

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

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

37 (b) Hearings conducted by the department pursuant to RCW
38 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100,
39 70A.15.3110, and 90.44.180.

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

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

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

8 **Sec. 16.** RCW 43.21B.305 and 2013 c 291 s 44 are each amended to
9 read as follows:

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

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

25 NEW SECTION. **Sec. 17.** Sections 1 through 14 of this act
26 constitute a new chapter in Title 79 RCW.

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