

SENATE BILL REPORT

SB 5125

As Reported by Senate Committee On:
Environment, Energy & Technology, February 9, 2021

Title: An act relating to affirming the process for disposing of dredged materials for federal navigation channel maintenance and improvement.

Brief Description: Affirming the process for disposing of dredged materials for federal navigation channel maintenance and improvement.

Sponsors: Senators Cleveland, Short and Wilson, C..

Brief History:

Committee Activity: Environment, Energy & Technology: 1/26/21, 2/09/21 [DPS].

Brief Summary of First Substitute Bill

- Amends the Shoreline Management Act to exempt actions taken by the United States Army Corps of Engineers on the Columbia River to maintain and improve federal navigation channels from the shoreline review.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5125 be substituted therefor, and the substitute bill do pass.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Ericksen, Ranking Member; Brown, Das, Fortunato, Hobbs, Liias, Nguyen, Sheldon, Short, Stanford and Wellman.

Staff: Julie Tran (786-7283)

Background: Shoreline Management Act Permits. The Shoreline Management Act of 1971 requires that most developments near state shorelines be consistent with shoreline master programs, which are local land-use policies and regulations for the uses of its

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shoreline areas. Some projects require a substantial development permit that is reviewed by the local government and filed with the Department of Ecology (Ecology) which includes:

- developments exceeding a cost of \$7,047—as adjusted for inflation by the Office of Financial Management in September 2017; or
- any development that materially interferes with the normal public use of the water or shorelines of the state.

In certain property-specific circumstances, local government may issue variance permits or conditional use permits allowing for development, which may be inconsistent with a local shoreline master program.

Dredged Material Management and Disposal. The Department of Natural Resources (DNR) is responsible for stewarding more than 2.6 million acres of state-owned aquatic lands and manages them to provide a balance of public benefits for the state. The aquatic lands managed by DNR includes tidelands, shorelands, harbors, and the lands lying beneath navigable waters.

The Dredged Material Management Program is a coordinated, multi-agency approach to manage materials dredged from harbors, rivers, and shipping lanes to be disposed of at certain aquatic land disposal sites. The approval of sites derives from a cooperative process involving Ecology, DNR, the Army Corps of Engineers (USACE), and the United States Environmental Protection Agency (EPA). Currently, there are eight approved dredged material disposal sites in Puget Sound, two sites in Grays Harbor, and two sites in Willapa Bay.

Before dredged material may be taken to a disposal site, a dredger must apply to DNR's Dredged Material Management Program office for a site use authorization. DNR only issues site use authorizations after:

- all other applicable federal, state, and local permits have been acquired by the proponent; and
- Ecology and EPA notify DNR that the dredged materials are suitable for disposal under the federal Clean Water Act and do not appear to create a threat to human health, welfare, or the environment.

Dredging proponents must pay a per-cubic yard disposal fee, adopted in rules by DNR, to use a disposal site. Disposal must occur consistent with conditions imposed by DNR in the site use authorization, which include the terms and conditions imposed by any other federal, state, and local permits.

The Legislature passed HB1480 in 2019, which streamlined the permitting process for disposing dredged materials. It created an exemption disposing dredged materials at disposal sites that were approved through the Dredged Material Management Program. This exemption is provided if the proponent of the disposal obtains a DNR valid site use authorization.

The disposal of dredged materials associated with federal navigation channel activities undertaken by USACE are subject to a dredged material management plan developed by USACE. The plan is subject to review under the National Environmental Policy Act and the State Environmental Policy Act.

For some dredging activities, a state water quality certification authorized under section 401 of the federal Clean Water Act is also required and may attach additional conditions to federal permits to ensure compliance with state water quality laws.

Summary of Bill (First Substitute): Actions taken by the Army Corps of Engineers on the Columbia River for the maintenance and improvement of federal navigation channels are exempt from the Shoreline Management Act's permit requirements if the project plans:

- have undergone national and state environmental policy review; and
- applied for state water quality certifications with Ecology.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Clarifies the actions taken by the Army Corps of Engineers on the Columbia River for the maintenance and improvement of federal navigation channels are exempt from shoreline review.
- The exemption applies if the project plan has undergone both national and state environmental policy review and applied for state water quality certification with Ecology.

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: This bill defines the types of dredging activities that do not require additional permits. It will unburden the ports, state, and local governments from requiring un-enforceable permits from the federal government where dredge plans and updates have already gone through substantial environmental impact analysis and coordination. The state has an interest in the safe affordable disposal of clean sediment for public needs. This bill provides geographical parity with Puget Sound on the treatment of pre-approved dredge disposal sites and prevents further confusion.

OTHER: A clear permit process for the federal navigation channels is very important.

There are questions of language clarity and technical concerns with this bill. This bill would benefit from a more specific definition as to what dredging activity would not need local review. Also, it should be noted that the Washington State Department of Transportation does not maintain federal navigation channels.

Persons Testifying: PRO: Senator Annette Cleveland, Prime Sponsor; Jim Hagar, Port of Vancouver USA; Amber Carter, Columbia River Steamship Operators Association; Gerry O'Keefe, Washington Public Ports Association.

OTHER: Tim Gates, Department of Ecology.

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