

# SENATE BILL REPORT

## SB 5836

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As of February 26, 2009

**Title:** An act relating to facilitating the transport of materials used in infrastructure projects, including transportation infrastructure projects, through marine transportation facilities.

**Brief Description:** Concerning the transport of infrastructure project materials through marine transportation facilities.

**Sponsors:** Senators Haugen and Swecker.

**Brief History:**

**Committee Activity:** Transportation: 2/23/09.

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### SENATE COMMITTEE ON TRANSPORTATION

**Staff:** Wendy Malkin (786-7434)

**Background:** Under the state's Shoreline Management Act (SMA), local governments develop shoreline master programs, adopted under rules established by the Department of Ecology, that establish goals and policies that are implemented through land use regulations. No substantial development is permitted on the state's shoreline unless a permit is obtained from the local jurisdiction.

The state's Growth Management Act (GMA) requires that each city and county in Washington take action to periodically review and revise its comprehensive plan and development regulations to ensure compliance with the GMA. All counties and cities, including those not fully planning under the GMA, are required to review and amend their policies and development regulations regarding critical areas and natural resource lands.

The State Environmental Policy Act (SEPA) review is required for a broad range of actions at all levels of state and local government. Under SEPA, an environmental impact statement is required for any major action having a probable significant, adverse environmental impact. The environmental impact statement is an analysis of the adverse environmental impacts. A lead agency is designated for most proposed actions. The lead agency is responsible for ensuring adequate environmental analysis is done and the SEPA procedural requirements are met.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Department of Natural Resources (DNR) administers the Surface Mining Act, which is a reclamation law that requires a permit for each mine that meets certain criteria. DNR has exclusive authority to regulate mine reclamation and approve reclamation plans. Reclamation means rehabilitation of disturbed areas resulting from surface or underground mining; it includes reestablishing vegetative cover, soil stability, and water conditions at the site.

DNR manages state-owned aquatic lands under the Aquatics Lands Act. State-owned aquatic lands include marine tidelands and the beds of Hood Canal, Puget Sound, Strait of Juan de Fuca, and coastal areas from the extreme low tide seaward three miles. The state asserts ownership based on whether a specific body of water is navigable. State-owned aquatic lands can be leased for moorage and anchorage. Generally, the moorage facilities cannot be connected to the shoreline.

The Pollution Control Hearings Board (The Board) hears appeals from orders and decisions made by agencies as provided by law. The Board provides an administrative hearing and a written decision. The Board consists of three members who are appointed by the Governor and confirmed by the state Senate for staggered six-year terms.

**Summary of Bill:** A marine transportation facility includes (a) docks, piers, and related facilities for the marine transportation of sand and gravel; and (b) land-based conveyance systems for delivery of sand and gravel from the surface mines to docks, piers, and related facilities.

Under the Surface Mining Act, DNR has the exclusive authority to regulate the design, construction, and operation of a marine transportation facility for sand and gravel associated with mining projects located primarily on lands designated as forest or mineral resource lands in counties with a population of fewer than 35,000 having a border on Puget Sound. Puget Sound includes Admiralty Inlet. At this time, Jefferson County is the only county that meets this criteria.

A marine transportation facility must obtain a permit from DNR before it can be constructed. As part of the application process for a permit, a marine transportation facility must submit any documents required to complete the SEPA review process and a fee of \$2,500. DNR must respond to the application by issuing a notice of the application and a request for written comments to certain federal, state, and local agencies; certain tribal governments; certain property owners; and any other organization that requests notice.

DNR is the lead agency for SEPA review, and it must conduct a SEPA review prior to issuing a decision on the application.

A party aggrieved by DNR's decision on an application may appeal to The Board.

Marine transportation facilities are exempt from both the SMA and the GMA.

**Appropriation:** None.

**Fiscal Note:** Available.

[OFM requested ten-year cost projection pursuant to I-960.]

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: Sand and gravel is essential for infrastructure projects, and urban areas need a steady supply. Currently, Western Washington receives a lot of its sand and gravel from Canada. The Fred Hill project, which could supply sand gravel to urban areas in Western Washington, has been stuck in the review process in Jefferson County for many years. The pit to pier project envisions using five ships. Building the five ships will create a lot of good union jobs in Washington that could employ about 1,000 people for seven to ten years. Jobs would also be created with the tug barge system. The spans of the Hood Canal Bridge are plenty wide, and the barges will be guided by tugs. The environmental regulations already in place are sufficient to protect Puget Sound. When sand and gravel fall into the Sound it is just sand, so there is no harm done to the environment. Hauling by barge is better for the environment than hauling by trucks over the county roads.

CON: This bill preempts local control and local decision-making by exempting this project from the GMA and SMA. The bill appears to focus on one county, which sets a bad precedent for public policy. DNR does not do land use permitting or permitting for projects such as the ones under the bill. DNR does want to be involved in this type of regulation or oversight. It is not the case that the costs incurred by DNR would be recovered through fees to the applicants. The SMA and the GMA are important public policy; we need to ensure that these acts are followed. This bill would undercut a lot of great work done by local governments to protect Puget Sound, and it would undercut efforts to restore the health of Puget Sound by 2020. Jefferson County has worked hard to comply with GMA and SMA; this bill undercuts our efforts. It strips Jefferson County of its decision-making authority. Counties want timely and efficient movement of materials for transportation projects, and marine corridors are the most efficient way to move the materials. But this bill takes county authority away for some local land use decisions. The counties oppose this bill for that reason. It is not a good decision to impose new costs on DNR in these economic times. Intensive industrial use is not a good use of our shoreline on Puget Sound when the area currently has no such uses. This bill supports the private ambitions of one company.

**Persons Testifying:** PRO: Senator Haugen, prime sponsor; Ezra Eickmeyer, Doug Weese, Fred Hill Mining; Matt Nichols, Nichols Boat Building; Don Lund, ILWU Local 51; Chuck Garman, Gunderson Marine; Mike Jewell, Marine Engineers Beneficial Association.

CON: Heath Packard, DNR; Naki Stevens, People for Puget Sound; Josh Weiss, Association of Counties; John Fabian, Hood Canal Coalition; Thomas Clingman, Department of Ecology; Phil Johnson, Jefferson County.