

HOUSE BILL REPORT

HB 1193

As Reported by House Committee On:
Environment & Energy

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: Representative Hoff.

Brief History:

Committee Activity:

Environment & Energy: 2/2/21, 2/5/21, 2/9/21 [DPS].

Brief Summary of Substitute Bill

- Exempts actions taken by the United States Army Corps of Engineers to maintain and improve federal navigation channels from Shoreline Management Act permit and review requirements, provided that other environmental review criteria are fulfilled.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Berry, Boehnke, Fey, Goehner, Harris-Talley, Ramel, Shewmake and Slatter.

Staff: Jacob Lipson (786-7196).

Background:

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.

Shoreline Management Act Permits.

The Shoreline Management Act (SMA) of 1971 requires that most developments near state shorelines be consistent with shoreline master programs, which are plans developed by local governments for the uses of their shoreline areas. Certain projects require a substantial development permit that is reviewed by the local government and filed with the Department of Ecology (Ecology): projects that require a substantial development permit include 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, variance permits or conditional use permits may be issued by a local government that allow for development that is not consistent with the local shoreline master program.

Dredged Material Disposal.

Materials dredged from harbors, rivers, and shipping lanes may be disposed of at certain state aquatic land disposal sites, which are approved through a cooperative process involving Ecology, the Department of Natural Resources (DNR), the United States Environmental Protection Agency (EPA), and the United States Army Corps of Engineers (USACE). There are currently 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 the DNR's Dredged Material Management Program office for a site use authorization. The DNR only issues site use authorizations, which include terms and conditions imposed by any other federal, state, and local permits, after:

- all other applicable federal, state, and local permits have been acquired by the proponent; and
- Ecology and the EPA notify the 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.

The disposal of dredged materials at a disposal site approved through the cooperative process involving Ecology, the DNR, the USACE, and the EPA does not require a permit under the SMA, provided that the proponent of the disposal obtains a valid site use authorization from the DNR.

The disposal of dredged materials associated with federal navigation channel activities undertaken by the USACE are subject to a dredged material management plan developed by the 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 Substitute Bill:

Shoreline Management Act permits, variances, letters of exemption, or other local government review requirements do not apply to certain actions taken by the United States Army Corps of Engineers to maintain and improve federal navigation channels in accordance with federally mandated dredged material management and improvement project plans, if the plan has been reviewed under the National Environmental Policy Act and the State Environmental Policy Act, and has applied for a state water quality certification under the federal Clean Water Act.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that the exception from Shoreline Management Act permitting, variance, and other review requirements applies to actions taken by the United States Army Corps of Engineers to maintain and improve federal navigation channels in accordance with federal dredged material management plans that have undergone both National Environmental Policy Act and State Environmental Policy Act reviews, and that have applied for a state water quality certification from the Department of Ecology.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Ports and the maintenance of marine trade highways are economically critical, and need a variety of environmental permits to operate. The intent of this bill is to clarify that one type of permit is not needed for dredging activities. There was recently an incident in which a dredging activity on the Lower Columbia River involving the Port of Vancouver caused confusion as to whether a Shoreline Management Act permit was needed. The United States Army Corps of Engineers has issued letters to the Department of Ecology noting the inapplicability of the Shoreline Management Act to projects consistent with federal dredged material management plans, which must receive environmental review under the National and State Environmental Policy Acts.

(Opposed) None.

(Other) The language in the bill as introduced confuses the intent of the bill. Instead of amending multiple sections of the Shoreline Management Act, a single section should be amended in a way that precisely describes what types of activities are not subject to the Shoreline Management Act. Provisions that apply to the Lower Columbia River should also apply statewide.

Persons Testifying: (In support) Representative Hoff, prime sponsor; Jim Hagar, Port of Vancouver; and Amber Carter, Columbia River Steamship Operators Association and Port of Vancouver.

(Other) Tim Gates, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.