

SENATE BILL REPORT

SHB 1193

As of March 17, 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: House Committee on Environment & Energy (originally sponsored by Representative Hoff).

Brief History: Passed House: 2/23/21, 97-0.

Committee Activity: Environment, Energy & Technology: 3/17/21.

Brief Summary of Bill

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

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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 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 \$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.

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.

In certain property-specific circumstances, local governments may issue variance permits or conditional use permits allowing 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). 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.

In 2019, the Legislature streamlined the permitting process for disposing dredged materials. It created an exemption for disposing dredged materials at sites 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: Actions taken by the USACE for maintenance and improvement of federal navigation channels are exempt from the Shoreline Management Act's permit, variances, letters of exemption, or other local government review requirements if the project plans:

- have undergone national and state environmental policy review; and
- applied for state water quality certifications with Ecology and under the federal Clean Water Act.

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: PRO: This bill eliminates the need for a SMA permits for the work done by USACE even if it is on port property. Even if you get a permit, the permit does not offer value and it is unenforceable. This bill would provide clarity and resolve this issue. There are other federal navigation channels outside of the Columbia River that are also impacted. Before any action can be taken, full consideration of the land, people, sacred burials, and rituals need to be taken into account. When an agency fails to do so, there are legal remedies. We should address the tribe concerns.

OTHER: This bill addresses whether certain actions relating to disposing sediments from a federal navigation channel actions on port property are subject to shoreline permits. Any work done by USACE and covered by a federal management plan is not subject to local permits. The ports should not have to get permits on behalf of USACE because the permits are unenforceable. This bill seeks to clarify that in statute. It might help to clarify in some circumstances where there are other federal laws or provisions of a congressional appropriation that would require directly that a federal agency get local permits. It might help to clarify that in those circumstances shoreline permits might be required. Ecology would prefer that this bill is implemented statewide to avoid any confusion about any actions taken by USACE.

Persons Testifying: PRO: Jim Hagar, Port of Vancouver; Amber Carter, Columbia River Steamship Operators Association, Identity Clark County and Port of Vancouver; Gerry O'Keefe, Washington Public Ports Association.

OTHER: Tim Gates, Department of Ecology.

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