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**SENATE BILL 5125**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Cleveland and Short

Prefiled 01/08/21.

1 AN ACT Relating to affirming the process for disposing of dredged  
2 materials for federal navigation channel maintenance and improvement;  
3 and amending RCW 90.58.140, 90.58.355, and 90.58.356.

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

5 **Sec. 1.** RCW 90.58.140 and 2019 c 225 s 1 are each amended to  
6 read as follows:

7 (1) A development shall not be undertaken on the shorelines of  
8 the state unless it is consistent with the policy of this chapter  
9 and, after adoption or approval, as appropriate, the applicable  
10 guidelines, rules, or master program.

11 (2) A substantial development shall not be undertaken on  
12 shorelines of the state without first obtaining a permit from the  
13 government entity having administrative jurisdiction under this  
14 chapter.

15 A permit shall be granted:

16 (a) From June 1, 1971, until such time as an applicable master  
17 program has become effective, only when the development proposed is  
18 consistent with: (i) The policy of RCW 90.58.020; and (ii) after  
19 their adoption, the guidelines and rules of the department; and (iii)  
20 so far as can be ascertained, the master program being developed for  
21 the area;

1 (b) After adoption or approval, as appropriate, by the department  
2 of an applicable master program, only when the development proposed  
3 is consistent with the applicable master program and this chapter.

4 (3) The local government shall establish a program, consistent  
5 with rules adopted by the department, for the administration and  
6 enforcement of the permit system provided in this section. The  
7 administration of the system so established shall be performed  
8 exclusively by the local government.

9 (4) Except as otherwise specifically provided in subsection (11)  
10 of this section, the local government shall require notification of  
11 the public of all applications for permits governed by any permit  
12 system established pursuant to subsection (3) of this section by  
13 ensuring that notice of the application is given by at least one of  
14 the following methods:

15 (a) Mailing of the notice to the latest recorded real property  
16 owners as shown by the records of the county assessor within at least  
17 three hundred feet of the boundary of the property upon which the  
18 substantial development is proposed;

19 (b) Posting of the notice in a conspicuous manner on the property  
20 upon which the project is to be constructed; or

21 (c) Any other manner deemed appropriate by local authorities to  
22 accomplish the objectives of reasonable notice to adjacent landowners  
23 and the public.

24 The notices shall include a statement that any person desiring to  
25 submit written comments concerning an application, or desiring to  
26 receive notification of the final decision concerning an application  
27 as expeditiously as possible after the issuance of the decision, may  
28 submit the comments or requests for decisions to the local government  
29 within thirty days of the last date the notice is to be published  
30 pursuant to this subsection. The local government shall forward, in a  
31 timely manner following the issuance of a decision, a copy of the  
32 decision to each person who submits a request for the decision.

33 If a hearing is to be held on an application, notices of such a  
34 hearing shall include a statement that any person may submit oral or  
35 written comments on an application at the hearing.

36 (5) The system shall include provisions to assure that  
37 construction pursuant to a permit will not begin or be authorized  
38 until twenty-one days from the date the permit decision was filed as  
39 provided in subsection (6) of this section; or until all review  
40 proceedings are terminated if the proceedings were initiated within

1 twenty-one days from the date of filing as defined in subsection (6)  
2 of this section except as follows:

3 (a) In the case of any permit issued to the state of Washington,  
4 department of transportation, for the construction and modification  
5 of SR 90 (I-90) on or adjacent to Lake Washington, the construction  
6 may begin after thirty days from the date of filing, and the permits  
7 are valid until December 31, 1995;

8 (b) (i) In the case of any permit or decision to issue any permit  
9 to the state of Washington, department of transportation, for the  
10 replacement of the floating bridge and landings of the state route  
11 number 520 Evergreen Point bridge on or adjacent to Lake Washington,  
12 the construction may begin twenty-one days from the date of filing.  
13 Any substantial development permit granted for the floating bridge  
14 and landings is deemed to have been granted on the date that the  
15 local government's decision to grant the permit is issued. This  
16 authorization to construct is limited to only those elements of the  
17 floating bridge and landings that do not preclude the department of  
18 transportation's selection of a four-lane alternative for state route  
19 number 520 between Interstate 5 and Medina. Additionally, the  
20 Washington state department of transportation shall not engage in or  
21 contract for any construction on any portion of state route number  
22 520 between Interstate 5 and the western landing of the floating  
23 bridge until the legislature has authorized the imposition of tolls  
24 on the Interstate 90 floating bridge and/or other funding sufficient  
25 to complete construction of the state route number 520 bridge  
26 replacement and HOV program. For the purposes of this subsection  
27 (5) (b), the "western landing of the floating bridge" means the least  
28 amount of new construction necessary to connect the new floating  
29 bridge to the existing state route number 520 and anchor the west end  
30 of the new floating bridge;

31 (ii) Nothing in this subsection (5) (b) precludes the shorelines  
32 hearings board from concluding that the project or any element of the  
33 project is inconsistent with the goals and policies of the shoreline  
34 management act or the local shoreline master program;

35 (iii) This subsection (5) (b) applies retroactively to any appeals  
36 filed after January 1, 2012, and to any appeals filed on or after  
37 March 23, 2012, and expires June 30, 2014;

38 (c) (i) In the case of permits for projects addressing significant  
39 public safety risks, as defined by the department of transportation,  
40 it is not in the public interest to delay construction until all

1 review proceedings are terminated. In the case of any permit issued  
2 under this chapter or decision to issue any permit under this chapter  
3 for a transportation project of the Washington state department of  
4 transportation, construction may begin twenty-one days after the date  
5 of filing if all components of the project achieve a no net loss of  
6 shoreline ecological functions, as defined by department guidelines  
7 adopted pursuant to RCW 90.58.060 and as determined through the  
8 following process:

9 (A) The department of transportation, as part of the permit  
10 review process, must provide the local government with an assessment  
11 of how the project affects shoreline ecological functions. The  
12 assessment must include specific actions for avoiding, minimizing,  
13 and mitigating impacts to shoreline ecological functions, developed  
14 in consultation with the department, that ensure there is no net loss  
15 of shoreline ecological functions; and

16 (B) The local government, after reviewing the assessment required  
17 in (c)(i)(A) of this subsection and prior to the final issuance of  
18 all appropriate shoreline permits and variances, must determine that  
19 the project will result in no net loss of shoreline ecological  
20 functions.

21 (ii) Nothing in this subsection (5)(c) precludes the shorelines  
22 hearings board from concluding that the shoreline project or any  
23 element of the project is inconsistent with this chapter, the local  
24 shoreline master program, chapter 43.21C RCW and its implementing  
25 regulations, or the applicable shoreline regulations.

26 (iii) This subsection (5)(c) does not apply to permit decisions  
27 for the replacement of the floating bridge and landings of the state  
28 route number 520 Evergreen Point bridge on or adjacent to Lake  
29 Washington;

30 (d) Except as authorized in (b) and (c) of this subsection,  
31 construction may be commenced no sooner than thirty days after the  
32 date of the appeal of the board's decision is filed if a permit is  
33 granted by the local government and (i) the granting of the permit is  
34 appealed to the shorelines hearings board within twenty-one days of  
35 the date of filing, (ii) the hearings board approves the granting of  
36 the permit by the local government or approves a portion of the  
37 substantial development for which the local government issued the  
38 permit, and (iii) an appeal for judicial review of the hearings board  
39 decision is filed pursuant to chapter 34.05 RCW. The appellant may  
40 request, within ten days of the filing of the appeal with the court,

1 a hearing before the court to determine whether construction pursuant  
2 to the permit approved by the hearings board or to a revised permit  
3 issued pursuant to the order of the hearings board should not  
4 commence. If, at the conclusion of the hearing, the court finds that  
5 construction pursuant to such a permit would involve a significant,  
6 irreversible damaging of the environment, the court shall prohibit  
7 the permittee from commencing the construction pursuant to the  
8 approved or revised permit until all review proceedings are final.  
9 Construction pursuant to a permit revised at the direction of the  
10 hearings board may begin only on that portion of the substantial  
11 development for which the local government had originally issued the  
12 permit, and construction pursuant to such a revised permit on other  
13 portions of the substantial development may not begin until after all  
14 review proceedings are terminated. In such a hearing before the  
15 court, the burden of proving whether the construction may involve  
16 significant irreversible damage to the environment and demonstrating  
17 whether such construction would or would not be appropriate is on the  
18 appellant;

19 (e) Except as authorized in (b) and (c) of this subsection, if  
20 the permit is for a substantial development meeting the requirements  
21 of subsection (11) of this section, construction pursuant to that  
22 permit may not begin or be authorized until twenty-one days from the  
23 date the permit decision was filed as provided in subsection (6) of  
24 this section.

25 If a permittee begins construction pursuant to (a), (b), (c),  
26 (d), or (e) of this subsection, the construction is begun at the  
27 permittee's own risk. If, as a result of judicial review, the courts  
28 order the removal of any portion of the construction or the  
29 restoration of any portion of the environment involved or require the  
30 alteration of any portion of a substantial development constructed  
31 pursuant to a permit, the permittee is barred from recovering damages  
32 or costs involved in adhering to such requirements from the local  
33 government that granted the permit, the hearings board, or any  
34 appellant or intervener.

35 (6) Any decision on an application for a permit under the  
36 authority of this section, whether it is an approval or a denial,  
37 shall, concurrently with the transmittal of the ruling to the  
38 applicant, be filed with the department and the attorney general.  
39 This shall be accomplished by return receipt requested mail. A

1 petition for review of such a decision must be commenced within  
2 twenty-one days from the date of filing of the decision.

3 (a) With regard to a permit other than a permit governed by  
4 subsection (10) of this section, "date of filing" as used in this  
5 section refers to the date of actual receipt by the department of the  
6 local government's decision.

7 (b) With regard to a permit for a variance or a conditional use  
8 governed by subsection (10) of this section, "date of filing" means  
9 the date the decision of the department is transmitted by the  
10 department to the local government.

11 (c) When a local government simultaneously transmits to the  
12 department its decision on a shoreline substantial development with  
13 its approval of either a shoreline conditional use permit or  
14 variance, or both, "date of filing" has the same meaning as defined  
15 in (b) of this subsection.

16 (d) The department shall notify in writing the local government  
17 and the applicant of the date of filing by telephone or electronic  
18 means, followed by written communication as necessary, to ensure that  
19 the applicant has received the full written decision.

20 (7) Applicants for permits under this section have the burden of  
21 proving that a proposed substantial development is consistent with  
22 the criteria that must be met before a permit is granted. In any  
23 review of the granting or denial of an application for a permit as  
24 provided in RCW 90.58.180 (1) and (2), the person requesting the  
25 review has the burden of proof.

26 (8) Any permit may, after a hearing with adequate notice to the  
27 permittee and the public, be rescinded by the issuing authority upon  
28 the finding that a permittee has not complied with conditions of a  
29 permit. If the department is of the opinion that noncompliance  
30 exists, the department shall provide written notice to the local  
31 government and the permittee. If the department is of the opinion  
32 that the noncompliance continues to exist thirty days after the date  
33 of the notice, and the local government has taken no action to  
34 rescind the permit, the department may petition the hearings board  
35 for a rescission of the permit upon written notice of the petition to  
36 the local government and the permittee if the request by the  
37 department is made to the hearings board within fifteen days of the  
38 termination of the thirty-day notice to the local government.

1 (9) The holder of a certification from the governor pursuant to  
2 chapter 80.50 RCW shall not be required to obtain a permit under this  
3 section.

4 (10) Any permit for a variance or a conditional use issued with  
5 approval by a local government under their approved master program  
6 must be submitted to the department for its approval or disapproval.

7 (11)(a) An application for a substantial development permit for a  
8 limited utility extension or for the construction of a bulkhead or  
9 other measures to protect a single-family residence and its  
10 appurtenant structures from shoreline erosion shall be subject to the  
11 following procedures:

12 (i) The public comment period under subsection (4) of this  
13 section shall be twenty days. The notice provided under subsection  
14 (4) of this section shall state the manner in which the public may  
15 obtain a copy of the local government decision on the application no  
16 later than two days following its issuance;

17 (ii) The local government shall issue its decision to grant or  
18 deny the permit within twenty-one days of the last day of the comment  
19 period specified in (a)(i) of this subsection; and

20 (iii) If there is an appeal of the decision to grant or deny the  
21 permit to the local government legislative authority, the appeal  
22 shall be finally determined by the legislative authority within  
23 thirty days.

24 (b) For purposes of this section, a limited utility extension  
25 means the extension of a utility service that:

26 (i) Is categorically exempt under chapter 43.21C RCW for one or  
27 more of the following: Natural gas, electricity, telephone, water, or  
28 sewer;

29 (ii) Will serve an existing use in compliance with this chapter;  
30 and

31 (iii) Will not extend more than twenty-five hundred linear feet  
32 within the shorelines of the state.

33 (12) A permit under this section is not required in order to  
34 dispose of dredged materials at a (~~disposal~~): (a) Disposal site  
35 approved through the cooperative planning process referenced in RCW  
36 79.105.500, provided the dredged material disposal proponent obtains  
37 a valid site use authorization from the dredged material management  
38 program office within the department of natural resources; or (b)  
39 site used for federal navigation channel maintenance and improvement  
40 projects and activities.

1       **Sec. 2.** RCW 90.58.355 and 2020 c 20 s 1506 are each amended to  
2 read as follows:

3       Requirements to obtain a substantial development permit,  
4 conditional use permit, variance, letter of exemption, or other  
5 review conducted by a local government to implement this chapter do  
6 not apply to:

7       (1) Any person conducting a remedial action at a facility  
8 pursuant to a consent decree, order, or agreed order issued pursuant  
9 to chapter 70A.305 RCW, or to the department of ecology when it  
10 conducts a remedial action under chapter 70A.305 RCW. The department  
11 must ensure compliance with the substantive requirements of this  
12 chapter through the consent decree, order, or agreed order issued  
13 pursuant to chapter 70A.305 RCW, or during the department-conducted  
14 remedial action, through the procedures developed by the department  
15 pursuant to RCW 70A.305.090;

16       (2) Any person installing site improvements for stormwater  
17 treatment in an existing boatyard facility to meet requirements of a  
18 national pollutant discharge elimination system stormwater general  
19 permit. The department must ensure compliance with the substantive  
20 requirements of this chapter through the review of engineering  
21 reports, site plans, and other documents related to the installation  
22 of boatyard stormwater treatment facilities; ((~~or~~))

23       (3) The department of transportation projects and activities that  
24 meet the conditions of RCW 90.58.356; or

25       (4) Federal navigation channel maintenance and improvement  
26 projects and activities.

27       **Sec. 3.** RCW 90.58.356 and 2015 3rd sp.s. c 15 s 10 are each  
28 amended to read as follows:

29       (1) ((~~For purposes of this section, the following definitions~~  
30 ~~apply:~~)) The definitions in this subsection apply throughout this  
31 section unless the context clearly requires otherwise.

32       (a) "Maintenance" means the preservation of the transportation  
33 facility, including surface, shoulders, roadsides, structures, and  
34 such traffic control devices as are necessary for safe and efficient  
35 utilization of the highway in a manner that substantially conforms to  
36 the preexisting design, function, and location as the original except  
37 to meet current engineering standards or environmental permit  
38 requirements.



1 (b) "Repair" means to restore a structure or development to a  
2 state comparable to its original condition including, but not limited  
3 to, restoring the development's size, shape, configuration, location,  
4 and external appearance, within a reasonable period after decay or  
5 partial destruction. Repair of a structure or development may not  
6 cause substantial adverse effects to shoreline resources or the  
7 shoreline environment. Replacement of a structure or development may  
8 be considered a repair if: Replacement is the common method of repair  
9 for the type of structure or development; the replacement structure  
10 or development is comparable to the original structure or development  
11 including, but not limited to, the size, shape, configuration,  
12 location, and external appearance of the original structure or  
13 development; and the replacement does not cause substantial adverse  
14 effects to shoreline resources or the shoreline environment.

15 (c) "Replacement" of any existing transportation facility means  
16 to replace in a manner that substantially conforms to the preexisting  
17 design, function, and location as the original except to meet current  
18 engineering standards or environmental permit requirements.  
19 Maintenance or replacement activities do not involve expansion of  
20 automobile lanes, and do not result in significant negative shoreline  
21 impact.

22 (2) The following department of transportation projects and  
23 activities do not require a substantial development permit,  
24 conditional use permit, variance, letter of exemption, or other  
25 review conducted by a local government:

26 (a) Maintenance, repair, or replacement that occurs within the  
27 roadway prism of a state highway as defined in RCW 46.04.560, the  
28 lease or ownership area of a state ferry terminal, federal navigation  
29 channel maintenance and improvement projects and activities,  
30 including the dredged material management plan, or the lease or  
31 ownership area of a transit facility, including ancillary  
32 transportation facilities such as pedestrian paths, bicycle paths, or  
33 both, and bike lanes;

34 (b) Construction or installation of safety structures and  
35 equipment, including pavement marking, freeway surveillance and  
36 control systems, railroad protective devices not including grade  
37 separated crossings, grooving, glare screen, safety barriers, energy  
38 attenuators, and hazardous or dangerous tree removal;

39 (c) Maintenance occurring within the right-of-way; or

1           (d) Construction undertaken in response to unforeseen,  
2 extraordinary circumstances that is necessary to prevent a decline,  
3 lapse, or cessation of service from a lawfully established  
4 transportation facility.

5           (3) The department of transportation must provide written  
6 notification of projects and activities authorized under this section  
7 with a cost in excess of one million dollars before the design or  
8 plan is finalized to all agencies with jurisdiction, agencies with  
9 facilities or services that may be impacted, and adjacent property  
10 owners.

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