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BILL ANALYSIS

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Senate Bill 506 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Dennis Olshove
Committee: Natural Resources and Environmental Affairs

Date Completed: 10-17-05

RATIONALE

The United States Army Corps of Engineers (USACE) is responsible for dredging rivers and harbors as necessary to maintain shipping and boating access to those areas. In many of Michigan's rivers and harbors, the sediment is contaminated with PCBs, DDT, dioxins, or heavy metals such as mercury, arsenic, chromium or lead. The open-water disposal of such contaminated sediment has been prohibited in Michigan since the 1970s. In the past, the USACE placed contaminated sediment in confined disposal areas, but as those disposal areas have become filled to capacity, the USACE has been looking for other options. Open-water disposal is cheaper than the alternative methods of disposal or treatment, and the USACE has considered renewing the practice for dredging projects in eight Michigan harbors, including Grand Haven. Although broad provisions in Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act prohibit the discharge of any injurious substance into the waters of the State, some people believe that the Act should specifically prohibit the open-water disposal of contaminated dredge materials.

CONTENT

The bill would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act, to prohibit the open-water disposal of contaminated dredge materials in the waters of the State.

Specifically, the bill states that notwithstanding any other provision of Part 31 or rules promulgated under it, the open-

water disposal of contaminated dredge materials in the waters of the State would be prohibited. The bill would define "open water disposal of contaminated dredge materials" as the placement of dredge materials contaminated with toxic substances (as defined in Rule 323.1205 of the Michigan Administrative Code) into the open waters of the waters of the State, not including the siting or use of a confined disposal facility designated by the U.S. Army Corps of Engineers, or beach nourishment activities using uncontaminated materials.

The Administrative Code defines "toxic substance" as a substance, except for heat, that is present in a sufficient concentration or quantity to be or to become harmful to plant life, animal life, or designated uses.

MCL 324.3101 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The practice of dredging up contaminated sediments and dumping them into open water recirculates the contaminants and toxic chemicals, making them bioavailable to fish and other organisms. Studies by the Environmental Protection Agency and the International Joint Commission have found that contaminated sediment is a significant source of contaminants in food products from the Great Lakes. This sediment should be removed and disposed of properly to prevent these harmful substances from entering the food chain. By enacting an

explicit prohibition against the disposal of contaminated dredge material in open waters of the State, the bill would help protect human health and the environment.

Supporting Argument

Under current law, the USACE may determine the most appropriate means of disposing of sediment from dredging. If a state or a non-Federal sponsor were to require the USACE to use another disposal method or impose additional requirements on the project, then the state could be responsible for the additional cost. Since dumping the material into open water is cheaper than placing the sediment in a confined disposal area or using other disposal alternatives, if Michigan refused to allow the open-water dumping of contaminated waste without a specific law prohibiting the practice, then the USACE could require the State to pay the additional cost of disposal. By specifically prohibiting the open-water dumping of contaminated sediment, the bill would help protect the State from liability for the additional disposal cost.

Supporting Argument

Allowing the USACE to dump contaminated sediment in the open waters of the Great Lakes would partially undo the work done under the Great Lakes Legacy Act and other cleanup efforts. The Great Lakes Legacy Act (GLLA) is a Federal program enacted in 2002, authorizing \$270 million over five years for the remediation of environmentally degraded areas in the Great Lakes basin. The Act focuses on cleaning up 31 Areas of Concern designated under the Great Lakes Water Quality Agreement (GLWQA) between the United States and Canada. The GLWQA defines Areas of Concern as "geographic areas that fail to meet the general or specific objectives of the agreement where such failure has caused or is likely to cause impairment of beneficial use of the area's ability to support aquatic life." Under the Agreement, 42 areas of concern have been identified; 31 of those are in or partially within the United States.

The GLLA gives priority to projects for the remediation of contaminated sediment in the Great Lakes states. For fiscal year (FY) 2005, the Federal government appropriated \$22.3 million under the Great Lakes Legacy Act. For FY 2006, the appropriation is \$30 million.

It makes little sense to spend \$270 million for the remediation of contaminated sediment in the Great Lakes, and then allow the open-water dumping of contaminated sediment, repolluting the lakes. According to testimony given before the Senate Committee, although the USACE would cover the contaminated sediment with clean material after dumping to contain and separate it from contact with plant and animal life, that method would not necessarily contain the contaminated sediment adequately. A direct prohibition would provide more certain environmental protection.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would expand what constitutes a violation of Part 31 of the Act. This could result in additional civil and criminal fines from increased violations, as well as increased costs to the correctional system. Civil fines would range from \$500 to \$5.0 million. Criminal fines would start at \$2,500 and could be imposed in amounts greater than \$1.0 million. (Fines in the upper range are imposed if the defendant's actions pose or posed a substantial endangerment to the public health, safety, or welfare.) A felony conviction for a violation of this part could result in up to five years' imprisonment. Civil fines would be deposited into the General Fund and criminal fines benefit local libraries.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.