**South Carolina General Assembly**

119th Session, 2011-2012

**A41, R75, H3587**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Edge, Viers, Hardwick, Hearn, Clemmons, Barfield, Hayes and Loftis

Document Path: l:\council\bills\nbd\11193ac11.docx

Companion/Similar bill(s): 497

Introduced in the House on February 3, 2011

Introduced in the Senate on March 8, 2011

Last Amended on April 26, 2011

Passed by the General Assembly on May 25, 2011

Governor's Action: June 7, 2011, Signed

Summary: Dredging canals

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 2/3/2011 House Introduced and read first time ([House Journal‑page 6](file:///h%3A%5Chj%20archive%5C2011%5C02-03-11.docx))

 2/3/2011 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 6](file:///h%3A%5Chj%20archive%5C2011%5C02-03-11.docx))

 2/16/2011 House Member(s) request name added as sponsor: Hayes

 3/2/2011 House Committee report: Favorable with amendment **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 2](file:///h%3A%5Chj%20archive%5C2011%5C03-02-11.docx))

 3/3/2011 House Member(s) request name added as sponsor: Loftis

 3/3/2011 House Amended ([House Journal‑page 26](file:///h%3A%5Chj%20archive%5C2011%5C03-03-11.docx))

 3/3/2011 House Read second time ([House Journal‑page 26](file:///h%3A%5Chj%20archive%5C2011%5C03-03-11.docx))

 3/3/2011 House Unanimous consent for third reading on next legislative day ([House Journal‑page 27](file:///h%3A%5Chj%20archive%5C2011%5C03-03-11.docx))

 3/3/2011 Scrivener's error corrected

 3/4/2011 House Read third time and sent to Senate ([House Journal‑page 2](file:///h%3A%5Chj%20archive%5C2011%5C03-04-11.docx))

 3/8/2011 Senate Introduced and read first time ([Senate Journal‑page 33](file:///h%3A%5Csj%20archive%5C2011%5C03-08-11.docx))

 3/8/2011 Senate Referred to Committee on **Agriculture and Natural Resources** ([Senate Journal‑page 33](file:///h%3A%5Csj%20archive%5C2011%5C03-08-11.docx))

 4/14/2011 Senate Polled out of committee **Agriculture and Natural Resources** ([Senate Journal‑page 19](file:///h%3A%5Csj%20archive%5C2011%5C04-14-11.docx))

 4/14/2011 Senate Committee report: Favorable **Agriculture and Natural Resources** ([Senate Journal‑page 19](file:///h%3A%5Csj%20archive%5C2011%5C04-14-11.docx))

 4/26/2011 Senate Amended ([Senate Journal‑page 31](file:///h%3A%5Csj%20archive%5C2011%5C04-26-11.docx))

 4/26/2011 Senate Read second time ([Senate Journal‑page 31](file:///h%3A%5Csj%20archive%5C2011%5C04-26-11.docx))

 4/26/2011 Senate Roll call Ayes‑41 Nays‑0 ([Senate Journal‑page 31](file:///h%3A%5Csj%20archive%5C2011%5C04-26-11.docx))

 4/27/2011 Scrivener's error corrected

 5/19/2011 Senate Read third time and returned to House with amendments ([Senate Journal‑page 17](file:///h%3A%5Csj%20archive%5C2011%5C05-19-11.docx))

 5/25/2011 House Concurred in Senate amendment and enrolled ([House Journal‑page 29](file:///h%3A%5Chj%20archive%5C2011%5C05-25-11.docx))

 5/25/2011 House Roll call Yeas‑107 Nays‑1 ([House Journal‑page 29](file:///h%3A%5Chj%20archive%5C2011%5C05-25-11.docx))

 6/1/2011 Ratified R 75

 6/7/2011 Signed By Governor

 6/14/2011 Effective date 06/07/11

 6/20/2011 Act No. 41

**VERSIONS OF THIS BILL**

[2/3/2011](file:///p%3A%5Cpprever%5C2011-12%5C3587_20110203.docx)

[3/2/2011](file:///p%3A%5Cpprever%5C2011-12%5C3587_20110302.docx)

[3/3/2011](file:///p%3A%5Cpprever%5C2011-12%5C3587_20110303.docx)

[3/3/2011-A](file:///p%3A%5Cpprever%5C2011-12%5C3587_20110303A.docx)

[4/14/2011](file:///p%3A%5Cpprever%5C2011-12%5C3587_20110414.docx)

[4/26/2011](file:///p%3A%5Cpprever%5C2011-12%5C3587_20110426.docx)

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(A41, R75, H3587)

**AN ACT TO AMEND SECTION 48‑39‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF TERMS USED IN THE REGULATION OF COASTAL TIDELANDS AND WETLANDS BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO DEFINE “MAINTENANCE DREDGING”; TO AMEND SECTION 48‑39‑130, RELATING TO PERMITS REQUIRED TO UTILIZE CRITICAL AREAS AND EXEMPTIONS FROM SUCH PERMITS, SO AS TO EXEMPT DREDGING BY MUNICIPALITIES AND COUNTIES IN CERTAIN EXISTING RECREATIONAL USE CANALS AND ESSENTIAL ACCESS CANALS CONVEYED TO THE STATE OR DEDICATED TO THE PUBLIC SINCE 1965 IF THE DREDGING IS AUTHORIZED BY A PERMIT FROM THE UNITED STATES ARMY CORPS OF ENGINEERS AND TO PROVIDE THAT DEPARTMENT ADMINISTERED CERTIFICATIONS FOR SUCH DREDGING ARE WAIVED; AND TO AMEND SECTION 48‑39‑150, RELATING TO THE PROCEDURES AND REQUIREMENTS FOR THE APPROVAL OR DENIAL OF CRITICAL AREA USE PERMITS, INCLUDING THE TIME WITHIN WHICH WORK MUST BE COMPLETED UNDER SUCH PERMITS, SO AS TO PROVIDE THAT WORK AUTHORIZED UNDER A MAINTENANCE DREDGING PERMIT MUST BE COMPLETED IN TEN YEARS, RATHER THAN FIVE YEARS; TO REQUIRE THE DEPARTMENT TO PROMULGATE REGULATIONS FOR MAINTENANCE DREDGING; AND TO PROVIDE THAT THE PROVISION AUTHORIZING DREDGING PURSUANT TO THIS ACT IS REPEALED JULY 1, 2026.**

Be it enacted by the General Assembly of the State of South Carolina:

**Definition of term**

SECTION 1. Section 48‑39‑10 of the 1976 Code is amended by adding:

 “( ) ‘Maintenance dredging’ means excavation to restore the depth of underwater lands or restore channels, basins, canals, or similar waterway accesses to depths and dimensions that support and maintain prior or existing levels of use that previously have been dredged pursuant to a license issued by the department or an exemption as provided in Section 48‑39‑130(D)(10) as added by Act 41 of 2011.”

**Exemption from permit**

SECTION 2. Section 48‑39‑130(D) of the 1976 Code is amended by adding:

 “(10) Dredging in existing navigational canal community developments by counties or municipalities of manmade, predominately armored, recreational use canals and essential access canals conveyed to the State or dedicated to the public for that purpose between 1965 and the effective date of this act if the maintenance dredging is authorized by a permit from the United States Army Corps of Engineers pursuant to the Federal Clean Water Act, as amended, or the Rivers and Harbors Act of 1899. All other department administered certifications for such dredging are deemed waived.”

**Completion of work required**

SECTION 3. Section 48‑39‑150(F) of the 1976 Code is amended to read:

 “(F) Except for maintenance dredging permits, work authorized by permits issued under this chapter must be completed within five years after the date of issuance. Maintenance dredging permitted under this chapter must be completed within ten years after the date of issuance. The time limit may be extended for good cause showing that due diligence toward completion of the work has been made as evidenced by significant work progress. An extension only may be granted if the permitted project meets the policies and regulations in force when the extension is requested or the permittee agrees to accept additional conditions which would bring the project into compliance. The time periods required by this subsection must be tolled during the pendency of an administrative or a judicial appeal of the permit issuance.”

**Regulations to be promulgated**

SECTION 4. The Department of Health and Environmental Control shall promulgate regulations, pursuant to Chapter 23, Title 1, to provide for maintenance dredging as defined in Section 48‑39‑10. The maintenance dredging regulations must:

 (1) take into account the fact that areas subject to maintenance dredging have previously been impacted and should be evaluated on the incremental impact of the maintenance dredging on existing conditions;

 (2) require the submission of a dredging program document depicting the estimated dimensions, including the existing and proposed depths and location of the general areas proposed to be dredged; the estimated quantity of material to be dredged; the proposed methods and techniques to accomplish the dredging; and the anticipated dredge material placement information at approved dredge disposal locations;

 (3) require that, to the extent practicable and reasonable, such maintenance dredging should be timed to minimize interference with and impacts to aquatic life designated as a threatened or endangered species;

 (4) require that such maintenance dredging should not cause significant erosion above the ordinary high water mark;

 (5) provide that the department must send notice of the expiration of any maintenance dredging permit to the permittee no later than thirty days prior to such permit’s expiration;

 (6) provide that the department may issue a five‑year extension for any department permit for maintenance dredging as defined in Section 48‑39‑10 existing as of the effective date of the regulation.

 The regulations should not exceed the scope or stringency of any applicable federal regulations to maintenance dredging and should, to the maximum extent possible, avoid duplication of analysis or evaluation of considerations subject to review by the United States Army Corps of Engineers pursuant to a Clean Water Act Section 404 permit for the same maintenance dredging project.

**Prospective repeal**

SECTION 5. Section 48‑39‑130(D)(10) of the 1976 Code is repealed on July 1, 2026. Any maintenance dredging occurring after July 1, 2026, in areas that were dredged pursuant to Section 48‑39‑130(D) must be performed pursuant to the provisions contained in Chapter 39, Title 48 and the maintenance dredging regulations promulgated pursuant to this act.

**Effect of act on department**’**s authority and on pending applications**

SECTION 6. Nothing in this act shall be construed to expand or increase the department’s jurisdiction or to require permits for activities or projects that are not currently subject to regulation by the department. Except for the extension of the permit duration for maintenance dredging permits to ten years, nothing in this act shall be construed to impact any pending request or application for any license or approval from the department.

**Severability clause**

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Time effective**

SECTION 8. This act takes effect upon approval of the Governor.

Ratified the 1st day of June, 2011.

Approved the 7th day of June, 2011.

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