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SENATE BILL 5645

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Rockefeller, Morton, Hatfield, Brandland, Sheldon and Rasmussen

Read first time 01/26/2007.                      Referred to Committee on Natural Resources, Ocean & Recreation.

1            AN ACT Relating to shellfish aquaculture; adding new sections to  
2 chapter 28B.40 RCW; adding a new chapter to Title 15 RCW; creating new  
3 sections; and providing expiration dates.

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

5            NEW SECTION.    **Sec. 1.**    LEGISLATIVE INTENT AND FINDINGS.    (1) The  
6 legislature declares that shellfish farming is an historic and well-  
7 established industry in Washington providing significant environmental  
8 and economic benefits to the state and its inhabitants.

9            (2) The legislature finds that:

10            (a) Shellfish farming provides significant environmental benefits  
11 to estuaries in Washington, and estuaries containing shellfish  
12 aquaculture are some of the healthiest in the United States. The  
13 filtering and recycling processes associated with shellfish feeding are  
14 critical in regulating the health of coastal ecosystems. These  
15 processes take on even greater importance as human activities and  
16 related pollution discharges increase in Washington's marine shoreline  
17 areas. These processes help counteract the potentially damaging  
18 effects of excessive nutrient enrichment of coastal waters, a process  
19 known as eutrophication.

1 (b) Native American tribes have federally protected treaty  
2 shellfishing rights and harvested shellfish in Washington's marine  
3 waters before European settlers arrived in the area, and continue to  
4 harvest and culture shellfish on lands both within and outside of their  
5 reservations. Native American tribes' deep historic familiarity with  
6 Washington's waters and with harvesting shellfish, combined with their  
7 concern for the environment, make them an integral party to any  
8 discussions or decisions relating to shellfish cultivation in the  
9 state.

10 (c) Shellfish farming has been a vital part of Washington's rural  
11 economy for over a century, and provides increasing opportunities for  
12 year-round family wage employment and economic development in areas  
13 where shellfish are farmed and processed. In addition, further  
14 economic benefits to the state are realized through goods and services  
15 provided to shellfish farmers and through the marketing of shellfish  
16 farm products.

17 (d) The health and viability of the state's marine waters depends  
18 on the health and viability of the shellfish aquaculture industry.

19 (e) Despite its historic cultural significance, its environmental  
20 benefits, and its contributions to the economy, viability of the  
21 shellfish farming industry is threatened by overlapping and  
22 inconsistent federal, state, and local government regulation. The  
23 legislature therefore encourages review and possible restructuring of  
24 existing state and local government regulatory programs to encourage  
25 development of shellfish farming within the state.

26 (f) Shellfish aquaculture activities must be conducted in a manner  
27 that is protective of the environment while maintaining the commercial  
28 viability of shellfish farms.

29 (g) Additional scientific research on the relationship between  
30 certain shellfish aquaculture activities and the marine environment, in  
31 particular geoduck culture and harvest methods, is necessary to ensure  
32 that shellfish aquaculture activities are conducted in an  
33 environmentally responsible and economically viable manner.

34 (3) It is the purpose of this chapter to develop and promote a  
35 comprehensive and efficient shellfish aquaculture regulatory process,  
36 informed by research, that protects the state's environment, natural  
37 resources, and recreational opportunities. To optimize limited  
38 available resources, state regulatory, environmental, and natural

1 resource agencies, the state department of agriculture, Native American  
2 tribes, local governments, and public and private sector interests must  
3 work cooperatively to establish common goals, minimize regulatory  
4 confusion, develop consistency in applying environmental standards,  
5 maximize environmental benefits through coordinated investment  
6 strategies, and eliminate duplicative processes.

7 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this  
8 section apply throughout this chapter unless the context indicates  
9 otherwise.

10 (1) "Aquaculture coordinator" means the position authorized in  
11 section 5 of this act.

12 (2) "Aquatic farmer" has the same meaning as set forth in RCW  
13 15.85.020.

14 (3) "Best management practices" means currently available and  
15 generally accepted techniques that seek to reduce negative impacts of  
16 shellfish aquaculture projects and activities.

17 (4) "Committee" means the shellfish aquaculture regulatory  
18 efficiency committee created in section 3 of this act.

19 (5) "Shellfish aquaculture activities" means activities involved in  
20 the seeding, cultivating, and harvesting of farmed molluscan shellfish,  
21 including oysters, mussels, scallops, and clams.

22 NEW SECTION. **Sec. 3.** SHELLFISH AQUACULTURE REGULATORY EFFICIENCY  
23 COMMITTEE. (1) The shellfish aquaculture regulatory efficiency  
24 committee is created. The committee consists of the following voting  
25 members: One member representing a coastal Native American tribe; one  
26 member representing a Puget Sound Native American tribe; the  
27 aquaculture coordinator; one member designated by the director of the  
28 department of fish and wildlife; one member designated by the public  
29 lands commissioner; one member designated by the director of the  
30 department of ecology; one member designated by the Washington state  
31 association of counties; one member designated by the Pacific coast  
32 shellfish growers association; and one member designated by state  
33 environmental organizations.

34 (2) The committee shall work within existing regulatory structures  
35 to integrate current state and local government environmental standards

1 and regulations into an efficient and consistent regulatory process.  
2 The committee may not create new environmental standards or  
3 regulations.

4 (3) The committee shall propose an integrated regulatory system for  
5 all current and new shellfish aquaculture projects and activities and  
6 make implementing recommendations to appropriate regulatory agencies.

7 (4) The committee may create technical subcommittees as needed.  
8 Recommendations made by a technical subcommittee must be approved by a  
9 majority of the voting members of the committee.

10 (5) Committee members will not be compensated but will receive  
11 reimbursement for travel expenses in accordance with RCW 43.03.050 and  
12 43.03.060.

13 (6) The department of ecology shall convene all meetings of the  
14 committee and provide administrative and clerical assistance to the  
15 committee. The office of regulatory assistance shall facilitate all  
16 meetings.

17 (7) The committee is advisory in nature. No vote of the committee  
18 may overrule existing statutes, regulations, or local ordinances.

19 (8) The committee shall strive to achieve an integrated regulatory  
20 system for shellfish aquaculture activities by December 1, 2007, and  
21 must complete it no later than December 1, 2008.

22 (9) The committee shall prepare a report to the legislature by  
23 December 1, 2007, summarizing its activities and progress toward  
24 developing an integrated regulatory system for shellfish aquaculture  
25 activities. If the integrated regulatory system for shellfish  
26 aquaculture activities is not completed by December 1, 2007, the  
27 committee shall prepare a second and final report to the legislature by  
28 December 1, 2008, describing the integrated regulatory system.

29 (10) The participation of any Native American tribe on the  
30 committee shall not, under any circumstances, be viewed as an admission  
31 by the tribe that any of its activities, or those of its members, are  
32 subject to any of the statutes, regulations, ordinances, standards, or  
33 permit systems reviewed, considered, or proposed by the committee.

34 (11) This section expires December 1, 2008.

35 NEW SECTION. **Sec. 4.** COMMITTEE RESPONSIBILITIES. (1) The  
36 committee and its authorized technical subcommittees shall coordinate  
37 state and local regulatory processes and approvals for all current and

1 new shellfish aquaculture activities. The committee shall identify  
2 existing environmental standards, assess the application of those  
3 standards, and develop an integrated regulatory process based upon  
4 environmental standards and best management practices for shellfish  
5 aquaculture activities.

6 (2) In developing an integrated regulatory process, the committee  
7 and its authorized technical subcommittees shall consider all state  
8 statutes and regulatory processes that are potentially applicable to  
9 shellfish aquaculture operations including, without limitation, the:

10 (a) State environmental policy act, chapter 43.21C RCW;

11 (b) Shoreline management act, chapter 90.58 RCW;

12 (c) Growth management act, chapter 36.70A RCW;

13 (d) Aquaculture disease control provisions, chapter 77.115 RCW;

14 (e) Aquaculture marketing act, chapter 15.85 RCW;

15 (f) Coastal zone management act consistency process (15 U.S.C. Sec.  
16 1456); and

17 (g) Clean water act water quality certification process (33 U.S.C.  
18 Sec. 1341).

19 (3) The statutes and regulatory processes listed in subsection (2)  
20 of this section may or may not be applicable to shellfish aquaculture  
21 activities. Nothing in this act shall be construed to amend, repeal,  
22 or otherwise modify the authority of any state or local government  
23 officer, department, or agency to perform any function, responsibility,  
24 or activity authorized under any other provision of law.

25 (4) The committee shall use the coastal zone management consistency  
26 process (15 U.S.C. Sec. 1456) and clean water act water quality  
27 certification process (33 U.S.C. Sec. 1341) related to the United  
28 States army corps of engineers' permitting of shellfish aquaculture  
29 activities as a vehicle for developing an integrated regulatory system  
30 for shellfish aquaculture activities in Washington.

31 (5) This section expires December 1, 2008.

32 NEW SECTION. **Sec. 5. AQUACULTURE COORDINATOR.** There is  
33 established within the department of agriculture an aquaculture  
34 coordinator. The aquaculture coordinator shall:

35 (1) Participate in the development of an integrated regulatory  
36 system for aquaculture activities and facilitate its implementation at  
37 the state and local government level;

1 (2) Provide technical assistance to aquatic farmers regarding  
2 federal, state, and local regulations relating to aquaculture;

3 (3) Serve as an information clearinghouse for aquaculture  
4 activities and regulations and actively seek federal funding for  
5 aquaculture research and development;

6 (4) Coordinate development projects to investigate and resolve  
7 biological and technical issues involved in raising selected species  
8 with commercial potential;

9 (5) Undertake other actions necessary to develop the aquaculture  
10 industry within the state, including but not limited to completing  
11 applications for grant funding for activities related to aquaculture;  
12 and

13 (6) Perform other functions and activities as may be assigned by  
14 the director of the department of agriculture.

15 NEW SECTION. **Sec. 6.** A new section is added to chapter 28B.40 RCW  
16 to read as follows:

17 **ADDITIONAL SCIENTIFIC RESEARCH.** (1) The Washington sea grant  
18 program shall review existing scientific research studies that have  
19 been completed, are in progress, or have been funded since issuance of  
20 the January 12, 2004, *Comprehensive Literature Review And Synopsis Of*  
21 *Issues Relating To Geoduck (Panopea Abrupta) Ecology And Aquaculture*  
22 *Production*, examining possible effects of currently prevalent geoduck  
23 and other shellfish aquaculture practices on the natural environment.

24 (2) To satisfy the minimum requirements of subsection (1) of this  
25 section, the Washington sea grant program shall, in consultation with  
26 experts in the field from Washington state academic institutions of  
27 higher learning (including the University of Washington, Washington  
28 State University, Western Washington University, and The Evergreen  
29 State College), the department of ecology, the department of fish and  
30 wildlife, the department of natural resources, Native American tribes,  
31 the northwest Indian fisheries commission, and the shellfish  
32 aquaculture industry, review current research and critical knowledge  
33 gaps regarding the following potential effects of shellfish and, in  
34 particular, geoduck aquaculture:

35 (a) The environmental effects of structures commonly used in the  
36 aquaculture industry to protect juvenile geoducks from predation. At  
37 a minimum the review shall assess:

- 1 (i) Physical and chemical characteristics of the sediment in areas  
2 used for geoduck cultivation;
- 3 (ii) Abundance and diversity metrics for infauna, epifauna, and  
4 submerged aquatic vegetation in areas used for geoduck cultivation; and
- 5 (iii) Abundance and diversity indices of fouling organisms  
6 associated with hard surface structures.
- 7 (b) The effects of harvesting geoducks from intertidal commercial  
8 geoduck beds, given prevalent harvesting techniques. At a minimum the  
9 review shall assess:
- 10 (i) The effects of harvest disturbance and document patterns of  
11 postharvest succession in species of benthic plants and animals;
- 12 (ii) Physical and chemical characteristics of sediments;
- 13 (iii) Abundance and diversity metrics for infauna, epifauna, and  
14 submerged aquatic vegetation in sedimentary habitats;
- 15 (iv) The presence, size, and distribution of woody debris or other  
16 large natural materials providing solid substrata; and
- 17 (v) The diversity of fouling organisms on solid substrata.
- 18 (c) The extent to which geoducks in standard aquaculture tracts  
19 alter the ecological characteristics, including species diversity and  
20 the abundance of other benthic organisms, of overlying waters when the  
21 tracks are submerged. At a minimum the review shall assess:
- 22 (i) Removal of suspended phytoplankton and detritus by geoduck  
23 filtration;
- 24 (ii) Enhancement of suspended detritus resulting from feces and  
25 pseudofeces and its affect on light penetration; and
- 26 (iii) Alteration of concentrations of dissolved inorganic nutrients  
27 and organic matter as a result of geoduck metabolism.
- 28 (d) Parasites and diseases in both wild and cultured geoduck  
29 populations.
- 30 (e) Genetic interactions between cultured and wild geoduck. At a  
31 minimum the review shall assess:
- 32 (i) Age at maturation in cultured intertidal geoducks;
- 33 (ii) The proportion of cultured geoducks that spawn during the  
34 course of a culture cycle;
- 35 (iii) Characterization of maturation synchrony between wild  
36 subtidal geoduck and cultured intertidal geoduck;
- 37 (iv) Genetic variability between cultured geoduck and wild geoduck;
- 38 (v) Relative parental contributions to cultured geoduck; and

1 (vi) Evidence of local adaptation.

2 (f) The use of sterile triploid geoducks, and whether triploid  
3 animals diminish the genetic interactions between wild and cultured  
4 geoducks. At a minimum the review shall assess:

5 (i) Maturation dynamics in triploid and diploid geoducks; and

6 (ii) The rate of reversion to diploidy in triploid geoducks.

7 (g) The reproductive success of cultured geoducks. At a minimum  
8 the review shall assess:

9 (i) Fecundity in geoducks aged two to six years;

10 (ii) The effect of planting density on fertilization success; and

11 (iii) Larval viability of cultured and wild geoducks.

12 (3) The Washington sea grant program shall use funding provided  
13 from the shellfish aquaculture research account created in section 7 of  
14 this act to enter into and manage contracts with scientific  
15 organizations or institutions to complete studies to address the  
16 critical knowledge gaps identified during the review specified in  
17 subsection (2) of this section.

18 (4) Prior to entering into a contract with a scientific  
19 organization or institution, the Washington sea grant program must  
20 analyze the credibility of the proposed party to the contract,  
21 including whether the party has credible experience, knowledge, and  
22 access to facilities necessary to fully execute research required by  
23 the contract.

24 (5) All research commissioned under this section must be subjected  
25 to a rigorous peer review process prior to being accepted and reported  
26 by the Washington sea grant program.

27 (6) When appropriate, all research commissioned under this section  
28 should address localized and cumulative effects of geoduck aquaculture.

29 (7) All research identified, prioritized, and commissioned under  
30 this section shall be completed and the results reported to the  
31 appropriate committees of the legislature no later than December 1,  
32 2013. However, the Washington sea grant program shall prioritize the  
33 studies required by this section and complete and report the results of  
34 studies that require a shorter timeline for completion in advance of  
35 the 2013 deadline. In addition, the Washington sea grant program shall  
36 provide the appropriate committees of the legislature with annual  
37 reports updating the status and progress of the required studies.



1        NEW SECTION.   **Sec. 7.**   A new section is added to chapter 28B.40 RCW  
2   to read as follows:

3        The shellfish aquaculture research account is created in the  
4   custody of the state treasurer to receive any legislative  
5   appropriations earmarked for the account.   Expenditures from the  
6   account may only be used by the Washington sea grant program for the  
7   research projects identified by section 6 of this act.   The account is  
8   subject to the allotment procedures under chapter 43.88 RCW, but an  
9   appropriation is not required for expenditures.

10       NEW SECTION.   **Sec. 8.**   Captions used in this act are not any part  
11   of the law.

12       NEW SECTION.   **Sec. 9.**   Sections 1, 2, and 5 of this act constitute  
13   a new chapter in Title 15 RCW.

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