

HOUSE BILL REPORT

E2SSB 5633

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to weed control.

Brief Description: Attempting to limit the growth and spread of the noxious weed spartina.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Snyder, Swecker, Hargrove, Haugen, Morton, Hochstatter, Owen and Rasmussen).

Brief History:

Committee Activity:

Agriculture & Ecology: 3/20/95, 3/30/95 [DPA].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 17 members: Representatives Chandler, Chairman; Koster, Vice Chairman; McMorris, Vice Chairman; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; R. Fisher; Honeyford; Johnson; Kremen; Poulsen; Regala; Robertson; Rust and Schoesler.

Staff: Kenneth Hirst (786-7105).

Background:

Spartina and Purple Loosestrife. Two species of spartina are native to Washington and both of these are found in eastern Washington. The non-native species, *Spartina alterniflora* was introduced to Willapa Bay in the late 1800s. It is an aggressive colonizer and a better competitor than native salt marsh plants in parts of the intertidal zone. It represents the largest infestation of cordgrass in the state. Although the largest population of the weed is found in Willapa Bay, smaller populations are found elsewhere along the coast and along the state's inland marine waters. *Spartina anglica* and *Spartina x townsendii* are hybrids of *Spartina alterniflora*. They are generally referred to as *Spartina anglica* and are found from the northern Kitsap peninsula to Skagit Bay. A small patch of *Spartina patens* is found at the mouth of the Dosewallips River.

Purple loosestrife was first documented in the state in 1929 along freshwater shorelands. It is now present throughout the state and is particularly abundant in Grant County and its neighboring counties. The plant appears to be colonizing more rapidly on the eastern side of the state than on the western side. It was first introduced to the Winchester Wasteway area in the 1960's and has invaded the area rapidly. *Lythrum salicaria* and *Lythrum virgatum* are closely related loosestrife species that are morphologically similar and not easily distinguished from each other in the field. Both species have been referred to as purple loosestrife.

State Noxious Weed List. The State's Noxious Weed Control Board adopts lists of weeds considered to be noxious and subject to control. The list is composed of Class A weeds that are to be controlled wherever they occur in the state, Class B weeds that are designated for control in specified regions of the state, and Class C weeds.

Short-term Water Quality Modifications. Rules of the Department of Ecology permit water quality criteria to be modified for a specific water body on a short-term basis when necessary to accommodate essential activities, respond to emergencies, or to otherwise protect the public interest. The rules specify the circumstances under which such a short-term modification may generally be issued for the aquatic application of herbicides.

Pesticide Registration and Use. In general, a pesticide cannot be sold or distributed within the United States unless it has been registered with the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act. Pesticides used in this state must be registered with the Department of Agriculture under the state's Pesticide Control Act and their use is regulated by the department under the Control Act and the Pesticide Application Act.

Hydraulic Project Approval (HPA). Before constructing a hydraulic project or performing other work that will use, divert, obstruct or change the natural flow or bed of any of the salt or fresh waters of the state, the person or agency proposing the project or work must secure the written approval of the Department of Fish and Wildlife regarding the means proposed for protecting fish life.

Developments and Substantial Developments under the SMA. The Shoreline Management Act (SMA) requires that a development conducted on the shorelines of the state be consistent with its policies and with the guidelines, rules, or master programs created under it. In general, a development for which the cost or market value is greater than \$2,500 or which materially interferes with the normal public use of the water or shorelines of the state is considered to be a "substantial" development. A substantial development may not be undertaken on the shorelines of the state without a substantial development permit. The act provides a number of exemptions from the definition of substantial development and, therefore, from the substantial development permit requirement.

SEPA. The State Environmental Policy Act (SEPA) requires that a detailed statement regarding the environmental impact of a proposed action be prepared for a major action that would significantly affect the quality of the environment.

Summary of Amended Bill:

Spartina Eradication Program. The Legislature mandates that one state agency, the Department of Agriculture, be responsible for a unified effort to eliminate spartina and purple loosestrife and be accountable to the Legislature on the progress of the eradication program. The department must coordinate the spartina and purple loosestrife control program, prepare a state-wide spartina management plan using integrated vegetation management strategies for all of the state's tidelands, direct on-the-ground efforts, evaluate the effectiveness of the control efforts, and report on the program twice each year until 1999. With regard to appropriations made to the department specifically for the removal or control of spartina or purple loosestrife, the department may: use the monies itself; grant funds to other state agencies, local governments, and nonprofit corporations for eradication purposes; and match private funds for eradication on private lands on a 50/50 basis.

Spartina removal includes restoration of intertidal land and other infested lands to the condition found on adjacent unaffected lands in the same tidal elevation. The departments of Fish and Wildlife, Ecology, Agriculture, and Natural Resources must develop a restoration plan in cooperation with owners of spartina infested lands. The plan must be submitted to the Legislature by December 31, 1995.

Facilitating the control of spartina and purple loosestrife is a high priority for all state agencies. The departments of Natural Resources and Fish and Wildlife and the State Parks and Recreation Commission are each responsible for spartina and purple loosestrife control on the state-owned aquatic lands each manages.

Noxious Weed Control. The presence of noxious weeds on public lands constitutes a public nuisance and their control on private lands is in the public interest.

The director of the Department of Ecology must issue water quality modification permits to federal, state, and local agencies and licensed applicators for the purpose of using state or federally approved herbicides for aquatic weeds listed as noxious weeds by the state's Noxious Weed Control Board. These permits are to be subject only to compliance with federal and state pesticide label requirements, federal and state laws governing the registration and use of pesticides, SEPA, and recommendations for controlling the weeds made by final environmental impact statements published by the department or the department jointly with other state agencies. The use of surfactants authorized for use with a pesticide by a state or federal pesticide label may not be further limited by the permit.

An HPA is not required for activities solely for the removal or control of spartina or purple loosestrife. By June 30, 1997, the Department of Fish and Wildlife must adopt rules for removing or controlling various other aquatic noxious weeds. Following the adoption of the rules, an HPA is not required for any project conducted solely for the removal or control of these other aquatic noxious weeds if it is conducted in conformity with the rules. From time to time as information becomes available, the department must prepare similar rules for additional aquatic noxious weeds and an HPA is not to be required for projects conducted solely for the removal or control of these additional aquatic noxious weeds if they are conducted in conformity with these additional rules.

Exempted from the definition of a "substantial development" under the SMA is the process of removing or controlling aquatic noxious weeds listed as noxious weeds by the state's Noxious Weed Control Board. This exemption applies if the removal or control is through the use of herbicides or other treatment methods that are recommended by a final environmental impact statement published by the department or the department jointly with other state agencies.

State agencies and local governments may not use other permitting requirements, authority, or mechanisms to override the intent and mandates of this act.

Amended Bill Compared to Engrossed Second Substitute Bill: The engrossed second substitute Senate bill requires projects for removing or controlling purple loosestrife to be done with hand-held equipment to qualify for an HPA exemption; the striking amendment does not. The striking amendment gives the same priority for removing or controlling purple loosestrife as is provided by the engrossed second substitute Senate bill for removing or controlling spartina and makes the Department of Agriculture responsible for such state efforts. The use of appropriations by the department and the use of surfactants by those using pesticides is clarified by the amendment.

Appropriation: None.

Fiscal Note: Available on substitute. New fiscal note requested on March 20, 1995.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: (1) Spartina is taking over Willapa Bay; the bay, the oyster industry, and an important resting stop for birds is about to be lost if action is not taken. (2) The spartina infestation of Willapa Bay is an ecological disaster in the making. (3) The bill establishes responsibilities of state agencies as stewards of the public resource; oyster growers are willing to shoulder such responsibility even for lands for which it is uneconomical.

Testimony Against: (1) If control efforts are not themselves controlled, the result can be just as bad as the infestation. (2) The actions permissible under a federal pesticide label are too broad; they must accommodate conditions nation-wide. (3) The environmental impact statement is for only certain drainage basins; it is not applicable state-wide.

Testified: Senator Snyder (prime sponsor); Representative Basich (pro); Pat Hamilton (pro); Dan Markham, The Willapa Alliance (pro); Jim Lowery, Pacific County Economic Development Council (pro); Jim Sayce, Pacific Council of Governments (pro); Maggie Coon, The Nature Conservancy (pro); Dick Sheldon, Oyster Growers & Crab Association (pro); and Stephan Kalinowski, Washington Association of Professional Biologists (con).