

HOUSE BILL REPORT

HB 1551

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: Representatives Hatfield, Buck, Basich, Johnson, Grant, Brumsickle, Mastin, Kessler, Sheldon, Chappell, Carrell, Morris, Quall, Pennington, Thompson, Chandler and Kremen.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/6/95, 2/22/95 [DPS].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. 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. 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. 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 in various locations in the inland marine waters. A small patch of *Spartina patens* is found at the mouth of the Dosewallips River.

Appropriations for Spartina Control. The operating budget for the 1991-93 biennium provided \$450,000 to the Department of Natural Resources (DNR) for the control and

eradication of spartina, including research, environmental impact statements, and public education. Originally, half of that amount was to be from the Resource Management Cost Account and half from the Aquatic Lands Enhancement Account; however, the 1992 supplemental budget instructed that the entire amount be from the latter account. The DNR was directed to develop a spartina eradication plan. The operating budget for the current biennium again provides \$450,000 to the DNR for the control and eradication of spartina. Half of the amount is from the Resource Management Cost Account and half from the Aquatic Lands Enhancement Account.

Purple Loosestrife. 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.

Short-term Modifications. The criteria that apply to the various classes (Class AA through C and Lake Class) of the state's surface waters are specified in rules adopted by the Department of Ecology. One section of those rules permits the 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, even though such activities may result in a temporary reduction of water quality conditions below those criteria and classifications. The rule specifies the circumstances under which such a short-term modification may generally be issued for the aquatic application of herbicides.

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 of 1971, as amended, 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. The statement is generally referred to as an environmental impact statement (EIS). In 1993, a final

EIS on Noxious Emergent Plant Management was published by a number of state agencies. The principal plants addressed in the EIS were spartina and purple loosestrife.

Summary of Substitute Bill:

Spartina and Purple Loosestrife. The Director of the Department of Ecology is directed to issue short-term water quality modification permits to public agencies and licensed pesticide applicators for the purpose of utilizing federally approved herbicides and surfactants for controlling non-native spartina and purple loosestrife. The permit is to be subject only to compliance with federal and state label requirements.

The process of removing or controlling non-native spartina and purple loosestrife is not a project or work for which an HPA is required. An exemption from the Shoreline Management Act's definition of a "substantial development" and, therefore, from its substantial development permit requirements, is also established for these weeds. The exemption is provided for the process of removing or controlling them from tidelands and wetlands through the use of an approved herbicide under the state's water pollution control laws or other approved methods.

Other. The 1993 final EIS regarding noxious emergent plant management is sufficient to meet the requirements of SEPA for the weeds examined in the document. State agencies and local governments may not use other permitting requirements, authority, or mechanisms to override the intent and mandates of this act.

Spartina Eradication Program. The Department of Ecology is designated as the agency responsible for a unified effort to eliminate spartina (*Spartina alterniflora*, *S. anglica*, and *S. patens*) and accountable to the Legislature on the progress of a spartina eradication program. The lead agency must report quarterly on the progress of the program, acres eradicated, and funds spent.

Appropriation. The sum of \$5 million is appropriated to the Department of Ecology from the Aquatic Lands Enhancement Account. The monies must be used exclusively for eradication of non-native spartina in state waters. This appropriation takes precedence on the available funds of the account that have not been committed by contract until the eradication program is complete. The department may use the funds. It may also grant funds to other agencies, local governments, and nonprofit corporations for eradication purposes, and may match private funds for eradication programs on private property on a 50/50 matching basis. Funds are for eradication and control, not for administration.

Substitute Bill Compared to Original Bill: The substitute bill: makes the Department of Ecology (DOE) the lead agency responsible for the spartina eradication effort and appropriates the monies to the DOE (rather than to the Department of Natural Resources, as in the original bill); makes the DOE responsible for accounting for the use of the funds at the state and local level; and provides the HPA and

substantial development permit exemptions and the water quality modification permits for activities to control non-native spartina and purple loosestrife (not other invasive aquatic weeds, as in the original bill).

Appropriation: The sum of \$5 million is appropriated to the Department of Ecology for controlling and eradicating spartina.

Fiscal Note: Available.

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

Testimony For: (1) The spartina infestation in Willapa Bay is threatening wildlife habitat; at stake is an entire ecosystem. The weed displaces native wildlife, threatens oyster growing, and, by clogging the estuary, can result in flooding. (2) The spartina infestation is getting worse, but state agencies always want more studies of the problem. The bill says that it is time to take action. (3) The spartina growth in recent years has been dramatic; it has reached the geometric portion of the growth curve. Soon all that will be left of Willapa Bay will be river channels through solid spartina. (4) The most reasonable control strategy is the application of an herbicide. (5) The state has spent \$500,000 studying this problem; it has prepared an EIS and a plan for controlling the weed, but no action has been taken. (6) Local people must be allowed to take action. Each year that action is delayed will increase the cost of control four fold. (7) The laws restricting actions to save this environment were not intended to have such an effect.

Testimony Against: (1) The bill appropriates \$5 million dollars for whatever people want to do. The effects of control actions on other species, the effectiveness of the actions, and how the money is spent should be monitored and analyzed. (2) A settlement, which does not preclude the use of pesticides, has recently been reached on this issue. It will allow integrated weed management this year. (3) Use of the recommended herbicide in other areas has not been effective. (4) Spartina has value as paper, fuel and other economic uses. (5) The (original) bill is not limited to non-native weeds. (6) Salmon smolt need to be monitored and protected. (7) The bill could actually delay action by restarting litigation.

Testified: Representative Hatfield (prime sponsor); Joe Moore (pro); Jim Sayce (pro); Clyde Sayce (pro); Michelle Brown, The Nature Conservancy (pro); Richard Wilson (pro); Dick Sheldon, Columbia River Crab Association, Northern Oyster Company Inc., and Long Beach Flood Control Board (pro); Malcolm McPhail (pro); Pat Hamilton, Pacific County Commissioner (pro); Craig Jacobson, Shoalwater Bay Indian Tribe (con); Laurie Valeriano, Washington Toxics Coalition (con); Andrew Wiegardt, Ad Hoc Coalition for Willapa Bay (con); Stan Biles, Department of Natural Resources (con); Linda Crerar, Department of Ecology (commented); and Cyreis Schmitt, Department of Fish and Wildlife (commented).