
SUBSTITUTE HOUSE BILL 1551

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Hatfield, Buck, Basich, Johnson, Grant, Brumsickle, Mastin, Kessler, Sheldon, Chappell, Carrell, Morris, Quall, Pennington, Thompson, Chandler and Kremen)

Read first time 02/22/95.

1 AN ACT Relating to weed control; amending RCW 75.20.100 and
2 90.58.030; adding a new section to chapter 90.48 RCW; adding a new
3 chapter to Title 17 RCW; making an appropriation; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

7 (a) *Spartina alterniflora*, *Spartina anglica*, and *Spartina patens*
8 which are collectively called spartina are not native to the state of
9 Washington nor to the west coast of North America. This noxious weed
10 was inadvertently introduced into the wetlands of the state and is now
11 aggressively invading new areas to the detriment of native ecosystems
12 and aquatic habitat.

13 (b) The spread of spartina threatens to permanently convert and
14 displace native freshwater and saltwater wetlands and intertidal zones,
15 including critical habitat for migratory birds, many fish species,
16 bivalves, invertebrates, marine mammals, and other animals. The
17 continued spread of spartina will permanently reduce the diversity and
18 the quantity of these species and will have a significant negative
19 environmental impact.

1 (c) Spartina poses a significant hydrological threat. Clumps and
2 meadows of spartina are dense environments that bind sediments and lift
3 the intertidal gradient up out of the intertidal zone through time.
4 This process reduces flows during flood conditions, raises flood
5 levels, and significantly alters the hydrological regime of estuarine
6 areas.

7 (d) Spartina spreads by rhizomes and seed production. Through
8 lateral growth by rhizomes, spartina establishes a dense monotypic
9 meadow. Through seed production and the spread of seed through the air
10 and by water, spartina is currently being spread to other states and to
11 Canadian provinces.

12 (e) Current laws and rules designed to protect the environment and
13 preserve the wetland habitats, fish, and wildlife of the state are not
14 designed to respond to an ecosystem-wide threat of this kind. State
15 and federal agencies, local governments, weed boards, concerned
16 individuals, and property owners attempting to deal with this emergency
17 have been frustrated by interagency disagreements, demands for an undue
18 amount of procedural and scientific process and information, dilatory
19 appeals, and the improper application of laws and regulations by
20 agencies that have in fact undermined the legislative purposes of those
21 same laws while ignoring the long-term implications of delay and
22 inaction. There is a compelling need for strong leadership,
23 coordination, and reporting by a single state agency to respond
24 appropriately to this urgent environmental challenge.

25 (f) Any further delay of control efforts will significantly
26 increase the cost of spartina control and reduce the likelihood of
27 long-term success. Control efforts must be coordinated across
28 political and ownership boundaries in order to be effective.

29 (g) In destroying the biodiversity of tidelands and elevating
30 tidelands, spartina places an undue financial burden upon private
31 citizens, local governments, and taxing districts and has had a
32 negative impact upon local economies dependent on a healthy estuarine
33 ecosystem.

34 NEW SECTION. **Sec. 2.** This state is facing an environmental
35 disaster that will affect other states as well as other nations. The
36 legislature finds that six years is sufficient time for state agencies
37 to debate solutions to the spartina problem that is occurring in state
38 waters. The purpose of this act is to focus agency action on control

1 and future eradication of spartina. It is the mandate of the
2 legislature that one state agency, the department of ecology, be
3 responsible for a unified effort to eliminate spartina and that state
4 agency shall be directly accountable to the legislature on the progress
5 of the spartina eradication program. The lead agency shall report
6 quarterly to each house of the legislature on the progress of the
7 program, on the number of acres eradicated, and on the funds spent. It
8 is the intent of the legislature that funding authorized by this act
9 shall be used in an eradication and control program and not in further
10 study costs and administrative costs.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.48 RCW
12 to read as follows:

13 The director shall issue short-term water quality modification
14 permits under WAC 173-201A-110 to federal, state, and local agencies
15 and applicators licensed under chapter 17.21 RCW for the purpose of
16 utilizing federally approved herbicides and surfactants for controlling
17 spartina and purple loosestrife, subject only to compliance with
18 federal and state label requirements. The director shall not utilize
19 this permit authority to otherwise condition or burden such weed
20 control efforts. For the purposes of this section and RCW 75.20.100
21 and 90.58.030, "spartina" means *Spartina alterniflora*, *Spartina*
22 *anglica*, *Spartina x townsendii*, and *Spartina patens* and "purple
23 loosestrife" means *Lythrum salicaria* and *Lythrum virgatum*.

24 **Sec. 4.** RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended to
25 read as follows:

26 In the event that any person or government agency desires to
27 construct any form of hydraulic project or perform other work that will
28 use, divert, obstruct, or change the natural flow or bed of any of the
29 salt or fresh waters of the state, such person or government agency
30 shall, before commencing construction or work thereon and to ensure the
31 proper protection of fish life, secure the written approval of the
32 department as to the adequacy of the means proposed for the protection
33 of fish life. This approval shall not be unreasonably withheld.
34 Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the department
35 shall grant or deny approval within forty-five calendar days of the
36 receipt of a complete application and notice of compliance with any
37 applicable requirements of the state environmental policy act, made in

1 the manner prescribed in this section. The applicant may document
2 receipt of application by filing in person or by registered mail. A
3 complete application for approval shall contain general plans for the
4 overall project, complete plans and specifications of the proposed
5 construction or work within the mean higher high water line in salt
6 water or within the ordinary high water line in fresh water, and
7 complete plans and specifications for the proper protection of fish
8 life. The forty-five day requirement shall be suspended if (1) after
9 ten working days of receipt of the application, the applicant remains
10 unavailable or unable to arrange for a timely field evaluation of the
11 proposed project; (2) the site is physically inaccessible for
12 inspection; or (3) the applicant requests delay. Immediately upon
13 determination that the forty-five day period is suspended, the
14 department shall notify the applicant in writing of the reasons for the
15 delay. Approval is valid for a period of up to five years from date of
16 issuance. The permittee must demonstrate substantial progress on
17 construction of that portion of the project relating to the approval
18 within two years of the date of issuance. If the department denies
19 approval, the department shall provide the applicant, in writing, a
20 statement of the specific reasons why and how the proposed project
21 would adversely affect fish life. Protection of fish life shall be the
22 only ground upon which approval may be denied or conditioned. Chapter
23 34.05 RCW applies to any denial of project approval, conditional
24 approval, or requirements for project modification upon which approval
25 may be contingent. If any person or government agency commences
26 construction on any hydraulic works or projects subject to this section
27 without first having obtained written approval of the department as to
28 the adequacy of the means proposed for the protection of fish life, or
29 if any person or government agency fails to follow or carry out any of
30 the requirements or conditions as are made a part of such approval, the
31 person or director of the agency is guilty of a gross misdemeanor. If
32 any such person or government agency is convicted of violating any of
33 the provisions of this section and continues construction on any such
34 works or projects without fully complying with the provisions hereof,
35 such works or projects are hereby declared a public nuisance and shall
36 be subject to abatement as such.

37 For the purposes of this section and RCW 75.20.103, "bed" shall
38 mean the land below the ordinary high water lines of state waters.
39 This definition shall not include irrigation ditches, canals, storm

1 water run-off devices, or other artificial watercourses except where
2 they exist in a natural watercourse that has been altered by man.

3 The phrase "to construct any form of hydraulic project or perform
4 other work" shall not include the act of driving across an established
5 ford. Driving across streams or on wetted stream beds at areas other
6 than established fords requires approval. Work within the ordinary
7 high water line of state waters to construct or repair a ford or
8 crossing requires approval.

9 The phrase "to construct any form of hydraulic project or perform
10 other work" shall not include the process of removal or control of
11 spartina and purple loosestrife, as defined in section 3 of this act.

12 In case of an emergency arising from weather or stream flow
13 conditions or other natural conditions, the department, through its
14 authorized representatives, shall issue immediately upon request oral
15 approval for removing any obstructions, repairing existing structures,
16 restoring stream banks, or to protect property threatened by the stream
17 or a change in the stream flow without the necessity of obtaining a
18 written approval prior to commencing work. Conditions of an oral
19 approval shall be reduced to writing within thirty days and complied
20 with as provided for in this section. Oral approval shall be granted
21 immediately upon request, for a stream crossing during an emergency
22 situation.

23 This section shall not apply to the construction of any form of
24 hydraulic project or other work which diverts water for agricultural
25 irrigation or stock watering purposes authorized under or recognized as
26 being valid by the state's water codes, or when such hydraulic project
27 or other work is associated with streambank stabilization to protect
28 farm and agricultural land as defined in RCW 84.34.020. These
29 irrigation or stock watering diversion and streambank stabilization
30 projects shall be governed by RCW 75.20.103.

31 **Sec. 5.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read
32 as follows:

33 As used in this chapter, unless the context otherwise requires, the
34 following definitions and concepts apply:

35 (1) Administration:

36 (a) "Department" means the department of ecology;

37 (b) "Director" means the director of the department of ecology;

1 (c) "Local government" means any county, incorporated city, or town
2 which contains within its boundaries any lands or waters subject to
3 this chapter;

4 (d) "Person" means an individual, partnership, corporation,
5 association, organization, cooperative, public or municipal
6 corporation, or agency of the state or local governmental unit however
7 designated;

8 (e) "Hearing board" means the shoreline hearings board established
9 by this chapter.

10 (2) Geographical:

11 (a) "Extreme low tide" means the lowest line on the land reached by
12 a receding tide;

13 (b) "Ordinary high water mark" on all lakes, streams, and tidal
14 water is that mark that will be found by examining the bed and banks
15 and ascertaining where the presence and action of waters are so common
16 and usual, and so long continued in all ordinary years, as to mark upon
17 the soil a character distinct from that of the abutting upland, in
18 respect to vegetation as that condition exists on June 1, 1971, as it
19 may naturally change thereafter, or as it may change thereafter in
20 accordance with permits issued by a local government or the department:
21 PROVIDED, That in any area where the ordinary high water mark cannot be
22 found, the ordinary high water mark adjoining salt water shall be the
23 line of mean higher high tide and the ordinary high water mark
24 adjoining fresh water shall be the line of mean high water;

25 (c) "Shorelines of the state" are the total of all "shorelines" and
26 "shorelines of state-wide significance" within the state;

27 (d) "Shorelines" means all of the water areas of the state,
28 including reservoirs, and their associated wetlands, together with the
29 lands underlying them; except (i) shorelines of state-wide
30 significance; (ii) shorelines on segments of streams upstream of a
31 point where the mean annual flow is twenty cubic feet per second or
32 less and the wetlands associated with such upstream segments; and (iii)
33 shorelines on lakes less than twenty acres in size and wetlands
34 associated with such small lakes;

35 (e) "Shorelines of state-wide significance" means the following
36 shorelines of the state:

37 (i) The area between the ordinary high water mark and the western
38 boundary of the state from Cape Disappointment on the south to Cape
39 Flattery on the north, including harbors, bays, estuaries, and inlets;

1 (ii) Those areas of Puget Sound and adjacent salt waters and the
2 Strait of Juan de Fuca between the ordinary high water mark and the
3 line of extreme low tide as follows:

- 4 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,
- 5 (B) Birch Bay--from Point Whitehorn to Birch Point,
- 6 (C) Hood Canal--from Tala Point to Foulweather Bluff,
- 7 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
- 8 and
- 9 (E) Padilla Bay--from March Point to William Point;

10 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and
11 adjacent salt waters north to the Canadian line and lying seaward from
12 the line of extreme low tide;

13 (iv) Those lakes, whether natural, artificial, or a combination
14 thereof, with a surface acreage of one thousand acres or more measured
15 at the ordinary high water mark;

16 (v) Those natural rivers or segments thereof as follows:

17 (A) Any west of the crest of the Cascade range downstream of a
18 point where the mean annual flow is measured at one thousand cubic feet
19 per second or more,

20 (B) Any east of the crest of the Cascade range downstream of a
21 point where the annual flow is measured at two hundred cubic feet per
22 second or more, or those portions of rivers east of the crest of the
23 Cascade range downstream from the first three hundred square miles of
24 drainage area, whichever is longer;

25 (vi) Those wetlands associated with (i), (ii), (iv), and (v) of
26 this subsection (2)(e);

27 (f) "Wetlands" or "wetland areas" means those lands extending
28 landward for two hundred feet in all directions as measured on a
29 horizontal plane from the ordinary high water mark; floodways and
30 contiguous floodplain areas landward two hundred feet from such
31 floodways; and all marshes, bogs, swamps, and river deltas associated
32 with the streams, lakes, and tidal waters which are subject to the
33 provisions of this chapter; the same to be designated as to location by
34 the department of ecology: PROVIDED, That any county or city may
35 determine that portion of a one-hundred-year-flood plain to be included
36 in its master program as long as such portion includes, as a minimum,
37 the floodway and the adjacent land extending landward two hundred feet
38 therefrom;

1 (g) "Floodway" means those portions of the area of a river valley
2 lying streamward from the outer limits of a watercourse upon which
3 flood waters are carried during periods of flooding that occur with
4 reasonable regularity, although not necessarily annually, said floodway
5 being identified, under normal condition, by changes in surface soil
6 conditions or changes in types or quality of vegetative ground cover
7 condition. The floodway shall not include those lands that can
8 reasonably be expected to be protected from flood waters by flood
9 control devices maintained by or maintained under license from the
10 federal government, the state, or a political subdivision of the state.

11 (3) Procedural terms:

12 (a) "Guidelines" means those standards adopted to implement the
13 policy of this chapter for regulation of use of the shorelines of the
14 state prior to adoption of master programs. Such standards shall also
15 provide criteria to local governments and the department in developing
16 master programs;

17 (b) "Master program" shall mean the comprehensive use plan for a
18 described area, and the use regulations together with maps, diagrams,
19 charts, or other descriptive material and text, a statement of desired
20 goals, and standards developed in accordance with the policies
21 enunciated in RCW 90.58.020;

22 (c) "State master program" is the cumulative total of all master
23 programs approved or adopted by the department of ecology;

24 (d) "Development" means a use consisting of the construction or
25 exterior alteration of structures; dredging; drilling; dumping;
26 filling; removal of any sand, gravel, or minerals; bulkheading; driving
27 of piling; placing of obstructions; or any project of a permanent or
28 temporary nature which interferes with the normal public use of the
29 surface of the waters overlying lands subject to this chapter at any
30 state of water level;

31 (e) "Substantial development" shall mean any development of which
32 the total cost or fair market value exceeds two thousand five hundred
33 dollars, or any development which materially interferes with the normal
34 public use of the water or shorelines of the state; except that the
35 following shall not be considered substantial developments for the
36 purpose of this chapter:

37 (i) Normal maintenance or repair of existing structures or
38 developments, including damage by accident, fire, or elements;

1 (ii) Construction of the normal protective bulkhead common to
2 single family residences;

3 (iii) Emergency construction necessary to protect property from
4 damage by the elements;

5 (iv) Construction and practices normal or necessary for farming,
6 irrigation, and ranching activities, including agricultural service
7 roads and utilities on wetlands, and the construction and maintenance
8 of irrigation structures including but not limited to head gates,
9 pumping facilities, and irrigation channels: PROVIDED, That a feedlot
10 of any size, all processing plants, other activities of a commercial
11 nature, alteration of the contour of the wetlands by leveling or
12 filling other than that which results from normal cultivation, shall
13 not be considered normal or necessary farming or ranching activities.
14 A feedlot shall be an enclosure or facility used or capable of being
15 used for feeding livestock hay, grain, silage, or other livestock feed,
16 but shall not include land for growing crops or vegetation for
17 livestock feeding and/or grazing, nor shall it include normal livestock
18 wintering operations;

19 (v) Construction or modification of navigational aids such as
20 channel markers and anchor buoys;

21 (vi) Construction on wetlands by an owner, lessee, or contract
22 purchaser of a single family residence for his own use or for the use
23 of his family, which residence does not exceed a height of thirty-five
24 feet above average grade level and which meets all requirements of the
25 state agency or local government having jurisdiction thereof, other
26 than requirements imposed pursuant to this chapter;

27 (vii) Construction of a dock, including a community dock, designed
28 for pleasure craft only, for the private noncommercial use of the
29 owner, lessee, or contract purchaser of single and multiple family
30 residences, the cost of which does not exceed two thousand five hundred
31 dollars;

32 (viii) Operation, maintenance, or construction of canals,
33 waterways, drains, reservoirs, or other facilities that now exist or
34 are hereafter created or developed as a part of an irrigation system
35 for the primary purpose of making use of system waters, including
36 return flow and artificially stored ground water for the irrigation of
37 lands;

1 (ix) The marking of property lines or corners on state owned lands,
2 when such marking does not significantly interfere with normal public
3 use of the surface of the water;

4 (x) Operation and maintenance of any system of dikes, ditches,
5 drains, or other facilities existing on September 8, 1975, which were
6 created, developed, or utilized primarily as a part of an agricultural
7 drainage or diking system;

8 (xi) Any action commenced prior to December 31, 1982, pertaining to
9 (A) the restoration of interim transportation services as may be
10 necessary as a consequence of the destruction of the Hood Canal bridge,
11 including, but not limited to, improvements to highways, development of
12 park and ride facilities, and development of ferry terminal facilities
13 until a new or reconstructed Hood Canal bridge is open to traffic; and
14 (B) the reconstruction of a permanent bridge at the site of the
15 original Hood Canal bridge;

16 (xii) The process of removal or control of spartina and purple
17 loosestrife, as defined in section 3 of this act, from tidelands and
18 wetlands through the use of an approved herbicide under section 3 of
19 this act or through other approved methods.

20 NEW SECTION. Sec. 6. The final environmental impact statement of
21 the department of ecology and other state agencies dated November 1993
22 regarding noxious emergent plant management shall be sufficient to meet
23 all of the requirements of the state environmental policy act for the
24 control or eradication of spartina and purple loosestrife, as defined
25 in section 3 of this act, and of any of the plants examined as species
26 of secondary concern in that document. The legislature finds that
27 further analysis beyond this document is not advisable or necessary
28 given the emergency situation that the state faces in controlling those
29 plants.

30 NEW SECTION. Sec. 7. State agencies and local governments may not
31 use any other local, state, or federal permitting requirement,
32 regulatory authority, or legal mechanism to override the legislative
33 intent and statutory mandates of this act.

34 NEW SECTION. Sec. 8. The sum of five million dollars, or as much
35 thereof as may be necessary, is appropriated for the biennium ending
36 June 30, 1997, from the aquatic lands enhancement account to the

1 department of ecology for a program for controlling and eradicating
2 spartina as described in section 9 of this act.

3 NEW SECTION. **Sec. 9.** (1) The appropriation in section 8 of this
4 act shall be used exclusively for the eradication of spartina in
5 Washington state waters and shall not be used for the administrative
6 expenses of state agencies. Use of moneys from the aquatic lands
7 enhancement account for this purpose shall take precedence over any
8 other use of the moneys of the account that have not been committed by
9 contract. This preemption shall remain in effect until spartina
10 eradication has been accomplished.

11 (2) The legislature finds that: The presence of spartina on
12 private lands threatens wildlife habitat and provides a source of
13 renewed spartina infestation for public lands; and effective spartina
14 eradication and control requires concerted efforts on both public and
15 private lands to protect public resources. The department of ecology
16 may, therefore, use moneys from the appropriation in section 8 of this
17 act for its own spartina eradication and control efforts and may
18 allocate the moneys to other state agencies, local governments, and
19 nonprofit corporations for spartina eradication and control purposes.
20 The department of ecology may also use the moneys to provide state
21 matching funds for such eradication and control activities conducted on
22 private property, where fifty percent of the moneys used are state
23 funds and fifty percent are from private sources. The department of
24 ecology shall maintain an accounting of the use of the funds at the
25 state and local level.

26 (3) As used in this section, "spartina" means *Spartina*
27 *alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina*
28 *patens*.

29 NEW SECTION. **Sec. 10.** Sections 1, 2, 6, 7, and 9 of this act
30 shall constitute a new chapter in Title 17 RCW.

31 NEW SECTION. **Sec. 11.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 12.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect immediately.

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