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HOUSE BILL 1551

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State of Washington

54th Legislature

1995 Regular Session

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

Read first time 01/30/95. Referred to Committee on Agriculture & Ecology.

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 angelica*, 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 be responsible for a unified effort  
3 to eliminate spartina and that state agency shall be directly  
4 accountable to the legislature on the progress of the spartina  
5 eradication program. The lead agency shall report quarterly to each  
6 house of the legislature on the progress of the program, on the number  
7 of acres eradicated, and on the funds spent. It is the intent of the  
8 legislature that funding authorized by this act shall be used in an  
9 eradication and control program and not in further study costs and  
10 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 licensed applicators for the purpose of utilizing federally  
16 approved herbicides and surfactants for invasive aquatic weed control  
17 subject only to compliance with federal label requirements. The  
18 director shall not utilize this permit authority to otherwise condition  
19 or burden weed control efforts.

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

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

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

33 For the purposes of this section and RCW 75.20.103, "bed" shall  
34 mean the land below the ordinary high water lines of state waters.  
35 This definition shall not include irrigation ditches, canals, storm  
36 water run-off devices, or other artificial watercourses except where  
37 they exist in a natural watercourse that has been altered by man.

38 The phrase "to construct any form of hydraulic project or perform  
39 other work" shall not include the act of driving across an established

1 ford. Driving across streams or on wetted stream beds at areas other  
2 than established fords requires approval. Work within the ordinary  
3 high water line of state waters to construct or repair a ford or  
4 crossing requires approval.

5 The phrase "to construct any form of hydraulic project or perform  
6 other work" shall not include the process of removal or control of  
7 invasive aquatic weeds.

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

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

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

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

31 (1) Administration:

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

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

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

37 (d) "Person" means an individual, partnership, corporation,  
38 association, organization, cooperative, public or municipal

1 corporation, or agency of the state or local governmental unit however  
2 designated;

3 (e) "Hearing board" means the shoreline hearings board established  
4 by this chapter.

5 (2) Geographical:

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

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

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

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

30 (e) "Shorelines of state-wide significance" means the following  
31 shorelines of the state:

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

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

38 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,

39 (B) Birch Bay--from Point Whitehorn to Birch Point,

1 (C) Hood Canal--from Tala Point to Foulweather Bluff,  
2 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,  
3 and  
4 (E) Padilla Bay--from March Point to William Point;  
5 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and  
6 adjacent salt waters north to the Canadian line and lying seaward from  
7 the line of extreme low tide;  
8 (iv) Those lakes, whether natural, artificial, or a combination  
9 thereof, with a surface acreage of one thousand acres or more measured  
10 at the ordinary high water mark;  
11 (v) Those natural rivers or segments thereof as follows:  
12 (A) Any west of the crest of the Cascade range downstream of a  
13 point where the mean annual flow is measured at one thousand cubic feet  
14 per second or more,  
15 (B) Any east of the crest of the Cascade range downstream of a  
16 point where the annual flow is measured at two hundred cubic feet per  
17 second or more, or those portions of rivers east of the crest of the  
18 Cascade range downstream from the first three hundred square miles of  
19 drainage area, whichever is longer;  
20 (vi) Those wetlands associated with (i), (ii), (iv), and (v) of  
21 this subsection (2)(e);  
22 (f) "Wetlands" or "wetland areas" means those lands extending  
23 landward for two hundred feet in all directions as measured on a  
24 horizontal plane from the ordinary high water mark; floodways and  
25 contiguous floodplain areas landward two hundred feet from such  
26 floodways; and all marshes, bogs, swamps, and river deltas associated  
27 with the streams, lakes, and tidal waters which are subject to the  
28 provisions of this chapter; the same to be designated as to location by  
29 the department of ecology: PROVIDED, That any county or city may  
30 determine that portion of a one-hundred-year-flood plain to be included  
31 in its master program as long as such portion includes, as a minimum,  
32 the floodway and the adjacent land extending landward two hundred feet  
33 therefrom;  
34 (g) "Floodway" means those portions of the area of a river valley  
35 lying streamward from the outer limits of a watercourse upon which  
36 flood waters are carried during periods of flooding that occur with  
37 reasonable regularity, although not necessarily annually, said floodway  
38 being identified, under normal condition, by changes in surface soil  
39 conditions or changes in types or quality of vegetative ground cover

1 condition. The floodway shall not include those lands that can  
2 reasonably be expected to be protected from flood waters by flood  
3 control devices maintained by or maintained under license from the  
4 federal government, the state, or a political subdivision of the state.

5 (3) Procedural terms:

6 (a) "Guidelines" means those standards adopted to implement the  
7 policy of this chapter for regulation of use of the shorelines of the  
8 state prior to adoption of master programs. Such standards shall also  
9 provide criteria to local governments and the department in developing  
10 master programs;

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

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

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

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

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

33 (ii) Construction of the normal protective bulkhead common to  
34 single family residences;

35 (iii) Emergency construction necessary to protect property from  
36 damage by the elements;

37 (iv) Construction and practices normal or necessary for farming,  
38 irrigation, and ranching activities, including agricultural service  
39 roads and utilities on wetlands, and the construction and maintenance



1 of irrigation structures including but not limited to head gates,  
2 pumping facilities, and irrigation channels: PROVIDED, That a feedlot  
3 of any size, all processing plants, other activities of a commercial  
4 nature, alteration of the contour of the wetlands by leveling or  
5 filling other than that which results from normal cultivation, shall  
6 not be considered normal or necessary farming or ranching activities.  
7 A feedlot shall be an enclosure or facility used or capable of being  
8 used for feeding livestock hay, grain, silage, or other livestock feed,  
9 but shall not include land for growing crops or vegetation for  
10 livestock feeding and/or grazing, nor shall it include normal livestock  
11 wintering operations;

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

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

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

25 (viii) Operation, maintenance, or construction of canals,  
26 waterways, drains, reservoirs, or other facilities that now exist or  
27 are hereafter created or developed as a part of an irrigation system  
28 for the primary purpose of making use of system waters, including  
29 return flow and artificially stored ground water for the irrigation of  
30 lands;

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

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

38 (xi) Any action commenced prior to December 31, 1982, pertaining to  
39 (A) the restoration of interim transportation services as may be

1 necessary as a consequence of the destruction of the Hood Canal bridge,  
2 including, but not limited to, improvements to highways, development of  
3 park and ride facilities, and development of ferry terminal facilities  
4 until a new or reconstructed Hood Canal bridge is open to traffic; and  
5 (B) the reconstruction of a permanent bridge at the site of the  
6 original Hood Canal bridge;

7 (xii) The process of removal or control of invasive aquatic weeds  
8 such as *Spartina alterniflora* from tidelands and wetlands through the  
9 use of an approved herbicide as governed by chapter 90.48 RCW or other  
10 approved methods.

11 NEW SECTION. **Sec. 6.** The environmental impact statement  
12 concerning the eradication and control of those noxious emergent weeds  
13 such as spartina shall be sufficient to meet all of the requirements of  
14 the state environmental policy act. The legislature finds that further  
15 analysis beyond this document is not advisable or necessary given the  
16 emergency situation that the state faces.

17 NEW SECTION. **Sec. 7.** State agencies and local governments may not  
18 use any other local, state, or federal permitting requirement,  
19 regulatory authority, or legal mechanism to override the legislative  
20 intent and statutory mandates of this act.

21 NEW SECTION. **Sec. 8.** The sum of five million dollars, or as much  
22 thereof as may be necessary, is appropriated for the biennium ending  
23 June 30, 1997, from the aquatic lands enhancement account to the  
24 department of natural resources for the purposes of this act.

25 NEW SECTION. **Sec. 9.** The appropriation in section 8 of this act  
26 shall take precedence on account funds for any available funds that  
27 have not been committed by contract. The preemption shall remain until  
28 the eradication program is complete. The department of natural  
29 resources may grant funds to other state agencies, to local  
30 governments, and to nonprofit corporations for eradication purposes and  
31 may use those moneys itself. The department of natural resources may  
32 match private funds for eradication programs on private property on a  
33 fifty-fifty matching basis. The accounting and supervision of the  
34 funds at the local level shall be conducted by the county weed boards.  
35 It is the intent of the legislature that expenses of administration of

1 state agencies for this program shall not be taken from the aquatic  
2 land enhancement account moneys and that these moneys shall be used  
3 exclusively for eradication of spartina in Washington state waters.

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

6 NEW SECTION. **Sec. 11.** If any provision of this act or its  
7 application to any person or circumstance is held invalid, the  
8 remainder of the act or the application of the provision to other  
9 persons or circumstances is not affected.

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

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