

HOUSE BILL REPORT

SB 5670

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to water pollution control.

Brief Description: Creating criteria for the issuance of water quality permits for the treatment of noxious weeds.

Sponsors: Senators Snyder and Rasmussen.

Brief History:

Committee Activity:

Agriculture & Ecology: 3/23/99; 4/1/99 [DPA].

Brief Summary of Bill (As Amended by House Committee)

- Adds experimental uses of herbicides on aquatic sites to the uses for which water quality permits are to be issued under the state's aquatic weed control program and exempts the issuance of permits for this purpose from SEPA review.
- Adds criteria for the issuance of water quality permits for the use of glyphosate and surfactants under the program and adds certain criteria for all permits issued under the program.
- Expressly authorizes the WSDA to amend earlier EIS's issued regarding aquatic weed control.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 13 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Koster, Republican Vice Chair; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump and Wood.

Staff: Kenneth Hirst (786-7105).

Background:

Legislation enacted in 1995 designates the Washington State Department of Agriculture (WSDA) as being responsible for a unified effort to eliminate spartina and control purple loosestrife. It requires the Department of Ecology (DOE) to issue or approve water quality permits to governmental agencies and licensed applicators for the use of registered herbicides and surfactants in controlling aquatic noxious weeds. The issuance of the permits is subject only to compliance with: federal and state pesticide label requirements, federal and state pesticide laws, State Environmental Policy Act (SEPA), and applicable requirements established for controlling the weed by a final environmental impact statement (EIS) published under SEPA by the DOE before May 5, 1995, or published by the WSDA or by the WSDA jointly with other state agencies. May 5, 1995, was the effective date of the 1995 legislation.

Two species of spartina are native to Washington and both of these are found in eastern Washington. A non-native species 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. Although the largest population of this cordgrass is found in Willapa Bay, smaller populations have been found elsewhere along the coast and along the state's inland marine waters. The spartina subject to control under the WSDA aquatic weed control program are the non-native species and its variants.

A rule adopted by the U. S. Environmental Protection Agency under the federal Insecticide, Fungicide and Rodenticide Act states that an experimental use permit is generally required for testing of any unregistered pesticide or any registered pesticide being tested for an unregistered use. It also describes certain types of these tests that are presumed not to involve unreasonable adverse effects and, therefore, are exempted from this permit requirement.

Summary of Amended Bill:

The circumstances under which the DOE is to issue or approve water quality permits for the use of registered herbicides and surfactants for controlling aquatic noxious weeds are also the circumstances under which it is to issue such a permit for certain experimental uses of herbicides on aquatic sites. The qualifying experimental uses are those described by federal rule as being small-scale tests conducted on a cumulative total of no more than one surface acre, with additional limitations.

When the DOE issues water quality permits for the purpose of using glyphosate and surfactants registered by the WSDA to control spartina, the water quality permits must contain the following criteria: Spartina treatment must occur between June 1st and October 31st of each year unless the DOE, the WSDA, and the Department of Fish and

Wildlife agree to add additional dates beyond this period, and special restrictions are established for applications on July 4th or Labor Day; the applicator must take all reasonable precautions to prevent the spraying of nontarget vegetation and nonvegetated areas; a period of 14 days between treatments is required for any area; aerial or ground broadcast application cannot be made when the wind speed exceeds 10 mph; and an application cannot be made when a tidal regime leaves the plants dry for less than four hours.

Water quality permits for using herbicides or surfactants registered by the WSDA to control aquatic noxious weeds other than spartina must also prohibit broadcast applications when the wind speed exceeds 10 mph. All water quality permits issued under this aquatic weed control program, except those issued for the experimental use of herbicides, are effective for five years, unless a shorter time is requested by the applicant.

The DOE must issue a water quality permit for the experimental use of herbicides on aquatic sites when the WSDA has issued an experimental use permit under the state's Pesticide Control Act. Water quality permits issued for this purpose are not subject to SEPA review.

The requirements identified for controlling an aquatic noxious weed by a final EIS published by the DOE before May 5, 1995, or by the WSDA or the WSDA jointly with other state agencies, are to be considered guidelines for the purpose of granting the water quality permits. The WSDA is expressly authorized to supplement, amend, or issue addenda to a final EIS published before May 5, 1995, which may assess the environmental impact of the application of stronger concentrations of active ingredients, altered application patterns, or other changes.

Amended Bill Compared to Original Bill:

The original bill refers to a "definition" of experimental uses provided by a federal rule. The amendments refer instead to certain small-scale tests conducted on a cumulative total of no more than one surface acre that are described in that federal rule.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original Bill) (1) Spartina is changing the habitat at Willapa Bay and is spreading seeds that will change the entire coastal habitat. The bill is necessary to

avoid the worst disaster conceivable short of a major tsunami. If control efforts continue the way they are currently being conducted, this battle is lost. (2) Lost in the areas being taken over by spartina are spawning grounds for salmon, important habitat for migratory waterfowl, and areas important for flood control and clams. (3) The "no action" alternative to spartina control has major environmental effects. (4) The conditions placed in statute by the bill are those that were originally negotiated with the DOE for the water quality permits. However, on appeal, the Pollution Control Hearings Board (PCHB) imposed more restrictive conditions. The wind speeds and drying times cited in the PCHB's conditions are too restrictive for the use of herbicides. Meaningful control cannot be achieved without the use of herbicides. (5) The conditions cited in the bill for the permits are carefully spelled out. (6) The new research that will be provided under the experimental use permits will be conducted on plots of less than one acre and will provide information important in combating spartina. (7) The DOE has hampered the pursuit of research into alternative treatments. More flexibility is needed. (8) Oysters are grown in deeper waters than those invaded by spartina, but if anything goes wrong in the spartina control program, oyster growers will be adversely affected. Nonetheless, oyster growers support the control program to save the coastal habitat.

Testimony Against: None.

Testified: (In Favor, Original Bill) Dick Sheldon, Northern Oyster Company and Willapa Bay/Grays Harbor Oyster Growers; Len Barson, Nature Conservancy of Washington; Lisa Lantz, State Noxious Weed Control Board; Ron Schultz, National Audubon Society; Mary Beth Lang, Department of Agriculture; and Dick Wallace, Department of Ecology.