

SENATE BILL REPORT

SB 5194

As Reported by Senate Committee On:
Environment, Water & Energy, February 15, 2011

Title: An act relating to protecting lake water quality by reducing phosphorus from lawn fertilizer.

Brief Description: Limiting the use of fertilizer containing phosphorus.

Sponsors: Senators White, Rockefeller, Ranker, Litzow, Nelson, Brown, Fraser, Pridemore, Hobbs, Keiser, Kohl-Welles, Kline, Chase and Harper.

Brief History:

Committee Activity: Environment, Water & Energy: 1/28/11, 2/15/11 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Majority Report: That Substitute Senate Bill No. 5194 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Nelson, Vice Chair; Chase, Fraser and Ranker.

Minority Report: Do not pass.

Signed by Senators Delvin and Holmquist Newbry.

Minority Report: That it be referred without recommendation.

Signed by Senators Honeyford, Ranking Minority Member; Morton.

Staff: Karen Epps (786-7424)

Background: The Water Pollution Control Act and the Surface Water Quality Standards require the Department of Ecology (Ecology) to establish criteria and programs necessary to protect lakes, rivers, and streams.

Phosphorus is a nutrient essential to both plant and animal life. Excess amounts of phosphorus in wastewater discharges can cause excessive aquatic plant growth in our streams and rivers. These plants can cause adverse water quality conditions by decreasing sunlight penetration, depleting dissolved oxygen during the night, and interfering with boating and other water uses.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The sale of laundry detergent that contains 0.5 percent or more phosphorous by weight is prohibited. Since July 1, 2008, dishwashing detergent that contains 0.5 percent or more phosphorus by weight in counties located east of the crest of the Cascade Mountains is prohibited where the population is less than 600,000 but greater than 390,000. Beginning July 1, 2010, the restriction on the sale of dishwashing detergent that contains more than 0.5 percent or more phosphorous by weight is effective statewide. The sale and distribution of detergents for commercial and industrial uses are exempt from the phosphorus limitation.

Summary of Bill (Recommended Substitute): A person may not apply a turf fertilizer containing phosphorus to turf, except in the following circumstances:

- for the purpose of repairing damaged grass, using either seeds or sod, during the growing season in which the grass is established;
- to an area if the soil in the area is deficient in plant available phosphorus, as shown by a soil test performed no more than 36 months before the application; or
- to be used on pastures, interior houseplants, flower and vegetable gardens, land used to grow grass for sod, or any land used for agricultural or silvicultural production.

A person may not apply turf fertilizer labeled as containing phosphorus intentionally to an impervious surface or to turf when the ground is frozen. No person may sell turf fertilizer that is labeled as containing phosphorus unless the sale is for a permitted use. A person who sells turf fertilizer at retail may only display turf fertilizer that is labeled as containing phosphorus if it is also clearly labeled for a permitted use. Violations of the use or sale of turf fertilizer containing phosphorus are not subject to the existing civil penalty provisions dealing with commercial fertilizer.

EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Substitute): Changes fertilizer to turf fertilizer. Defines turf fertilizer to mean a commercial fertilizer that is labeled for use on turf, and does not include commercial fertilizers derived solely from organic materials, biosolids, or biosolid products. Removes manipulated animal or vegetable manure or biosolids from the provisions prohibiting the application of fertilizer when the ground is frozen or intentionally to an impervious surface. Removes the requirement that fertilizer containing phosphorus, manipulated animal or vegetable manure, or biosolids that is accidentally applied to an impervious surface be legally applied to another site or returned to an appropriate container.

Allows for the application of turf fertilizer containing phosphorus for the purpose of repairing damaged grass, using either seeds or sod, during the growing season in which the grass is established. Allows for the application of turf fertilizer to an area if the soil in the area is deficient in plant available phosphorus, as shown by a soil test performed no more than 36 months before the application. Provides that turf fertilizer with phosphorus may be used on pastures, interior houseplants, flower and vegetable gardens, land used to grow grass for sod, or any land used for agricultural or silvicultural production.

Changes the provision regarding sale at retail to provide that a person who sells turf fertilizer at retail may only display turf fertilizer that is labeled as containing phosphorus if it is also clearly labeled for a permitted use.

Exempts these provisions from existing civil penalty provisions dealing with commercial fertilizer. Establishes an effective date of January 1, 2013.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2013.

Staff Summary of Public Testimony on Original Bill: PRO: Phosphorus is essential, but too much phosphorus can be a bad thing. Phosphorus in fertilizer on our lawns and gardens seeps into our wastewater, and that pollutes our rivers and lakes throughout the state. Over 200 waterways have toxic algae blooms that can affect wildlife and native plants. Phosphorus pollution is a problem in various areas of the state, including the Spokane River, Lake Whatcom, the Duwamish river, and other areas around the state. This bill does not ban the use of phosphorus; it simply smartly regulates the sale of fertilizer with phosphorus. The intent of the bill is to focus on lawn fertilizers. The ban on phosphorus in dishwashing detergents resulted in a measurable 10 percent reduction in phosphorus coming from the Spokane treatment plant. Passage of this legislation could be incredibly cost-effective. This bill is well constructed to consider both agricultural uses and gardening uses in flower and vegetable beds. Efforts such as this bill, aimed at reducing nonpoint sources of phosphorus, are a commendable step forward. This is modeled after bills passed in other states. Studies show that a ban similar to this one reduced phosphorus in the Huron River by 28 percent. Similar studies have found similar results. A Minnesota study found reductions of 15 to 20 percent. With so many non-toxic, non-carcinogenic fertilizing agents for lawns that produce the same result, discouraging the use of agents that can be harmful to our ecosystem is a step in the right direction.

CON: Without adequate phosphorus, turf develops a weak root system and is more susceptible to disease and damage. One of the most important functions of phosphorus is to build a vigorous and healthy root system. On heavily used fields, such as golf courses and sports fields, a weak root system causes bare patches and muddy spots to develop, which can cause injuries to someone on the golf course or sport field. By the time the soil shows deficiency in phosphorus, the root structure is already compromised. Phosphorus enters water bodies from a variety of sources such as decaying vegetation, failing septic systems, pet waste, and geese excrement. This bill ignores major phosphorus sources. To date, none of the states that have enacted bans on fertilizer containing phosphorus have been able to show a change in water quality connected to the ban. Phosphorus binds to the soil particles, so it only moves if the soil moves. This bill moves regulation from the Department of Agriculture (DOA) to the Ecology, but it would make more sense for the DOA to regulate this. This bill does not gauge the effectiveness of this ban or establish a cost-benefit analysis. This bill does not consider the expertise of licensed and certified applicators. There is concern that the low regulatory costs in the fiscal note suggest that there will be little or no monitoring. This bill lacks an education component. This bill fails to protect the ability of an agriculture retailer to display a fertilizer that contains phosphorus. The retail display ban of fertilizer that contains phosphorus adds an incremental burden to retailers.

OTHER: Phosphorus contamination in our waters is an important issue. Applying phosphorus based on soil test results makes sense. Allowing for the use of phosphorus in the first growing season is very important. There are some scientific inconsistencies in this bill. Existing research shows that soil erosion from healthy turf is essentially nonexistent because the healthy turf holds that soil in place. There is other research that shows that unhealthy turf results in more soil runoff and phosphorus runoff because the canopy thins out and more soil is available to be moved in runoff. There is concern that this bill will not have the intended impact.

Persons Testifying: PRO: Senator White, prime sponsor; Sheila Collins, City of Spokane; Melissa Gombosky, Inland Empire Paper Company; Cliff Traisman, WA Environmental Council; Rick Eichstaedt, Spokane Riverkeepers; Joe Daniels, WA Lakes Protection Assn.; Jonathan Frodge, City of Seattle; Mary Moore, League of Women Voters.

CON: Michael Shaw, Pierce County; Heather Hanson, WA State Nursery and Landscape Assn., WA Assn. of Professional Landscapers, WA Friends of Farms and Forests; Robin Parry, citizen; Tom McBride, Jim Fitzgerald, Far West Agribusiness Assn.; Paul Ramsdell, Western WA Golf Course Superintendents; Larry Gilhuly, United States Golf Assn.; Stephanie Pizzoferrato, The Scotts Miracle Gro Company; Charlie Brown, Fred Meyer Stores.

OTHER: Jed Herman, Department of Natural Resources; Eric Miltner, WA State University.