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**SENATE BILL 5626**

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**State of Washington****66th Legislature****2019 Regular Session****By** Senators Takko, Warnick, Hobbs, Honeyford, and Van De Wege

1       AN ACT Relating to ensuring the safe and productive cultivation  
2 of shellfish; amending RCW 90.48.260 and 43.21C.0383; adding new  
3 sections to chapter 90.48 RCW; creating a new section; making  
4 appropriations; and declaring an emergency.

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

6       NEW SECTION. **Sec. 1.** The legislature finds that the cultivation  
7 of shellfish in Willapa Bay and Grays Harbor is an important part of  
8 the economy of southwest Washington. That economic sector is  
9 threatened by the continued invasion of burrowing shrimp onto the  
10 tidelands of Willapa Bay and Grays Harbor, rendering those tidelands  
11 useless for shellfish aquaculture and causing significant damage to  
12 the ecosystem. The inability to control this invasion since 2015  
13 poses a significant risk to the economy and ecosystems of Willapa Bay  
14 and Grays Harbor. The legislature hereby declares a state of  
15 emergency and directs state agencies to utilize all resources to  
16 coordinate a response to this emergency in order to preserve the  
17 economy and ecology of Willapa Bay and Grays Harbor.

18       NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48  
19 RCW to read as follows:

1        By May 15, 2019, the department shall authorize the use of  
2 imidacloprid to control infestations of burrowing shrimp in Willapa  
3 Bay and Grays Harbor for the 2019 treatment season. The authorization  
4 must be issued to any entity that applied for, or was part of any  
5 group that applied for, a national pollution discharge elimination  
6 system permit as of January 2016. Such an authorization must be  
7 limited to an aggregate maximum of one thousand acres of imidacloprid  
8 application during the 2019 treatment season.

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

11        (1) By April 15, 2020, the department shall issue a national  
12 pollutant discharge elimination system permit for the use of  
13 pesticides to control infestations of burrowing shrimp in association  
14 with the cultivation of shellfish. With the exception of the  
15 requirements set forth in subsection (2) of this section, the  
16 department may not impose limitations, standards, or monitoring  
17 requirements in connection with such a permit that are any more  
18 stringent than those contained in the federal registration for any  
19 pesticide subject to the permit.

20        (2) The national pollutant discharge elimination system permit  
21 issued pursuant to this section must comply with the following  
22 requirements:

23            (a) The permit must limit the total treated acreage under the  
24 permit to an aggregate maximum of one thousand acres per year; and

25            (b) The permit must prohibit the use of helicopters to apply  
26 pesticides under the permit.

27        (3) The use of pesticides to control burrowing shrimp in  
28 connection with the cultivation of shellfish under a permit issued  
29 pursuant to this section is exempt from the requirements of RCW  
30 90.48.160, chapter 43.21C RCW, and chapter 173-204 WAC.

31        (4) For the purposes of this section, "cultivation of shellfish"  
32 means the cultivation of shellfish on private or public facilities,  
33 or both, located within the marine waters of the state in Willapa Bay  
34 and Grays Harbor.

35        **Sec. 4.**    RCW 90.48.260 and 2012 1st sp.s. c 1 s 313 are each  
36 amended to read as follows:

37        (1) The department of ecology is hereby designated as the state  
38 water pollution control agency for all purposes of the federal clean

water act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act as well as to take all action necessary to secure to the state the benefits and to meet the requirements of that act. With regard to the national estuary program established by section 320 of that act, the department shall exercise its responsibility jointly with the Puget Sound partnership, created in RCW 90.71.210. The department of ecology may delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties regarding animal feeding operations and concentrated animal feeding operations, to the department of agriculture through a memorandum of understanding. Until any such delegation receives federal approval, the department of agriculture's adoption or issuance of animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives pertaining to water quality shall be accomplished after reaching agreement with the director of the department of ecology. Adoption or issuance and implementation shall be accomplished so that compliance with such animal feeding operation and concentrated animal feeding operation rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. With regard to the regulation of pesticides used to control burrowing shrimp on tidelands in Willapa Bay and Grays Harbor, the department shall delegate its authority under this chapter, including its national pollutant discharge elimination permit system authority and duties, to the department of agriculture through a memorandum of understanding, effective July 1, 2020. Until such a delegation of authority receives federal approval, the department of agriculture's adoption or issuance of water quality rules, permits, programs, and directives regarding the application of pesticides used to control burrowing shrimp on tidelands in Willapa Bay and Grays Harbor must be accomplished after reaching agreement with the director of the department. Adoption or issuance and implementation must be accomplished so that compliance with all rules, permits, programs, and directives will achieve compliance with all federal and state water pollution control laws. The powers granted herein include, among others, and notwithstanding any other provisions of this chapter or otherwise, the following:

(a) Complete authority to establish and administer a comprehensive state point source waste discharge or pollution discharge elimination permit program which will enable the department

1 to qualify for full participation in any national waste discharge or  
2 pollution discharge elimination permit system and will allow the  
3 department to be the sole agency issuing permits required by such  
4 national system operating in the state of Washington subject to the  
5 provisions of RCW 90.48.262(2). Program elements authorized herein  
6 may include, but are not limited to: (i) Effluent treatment and  
7 limitation requirements together with timing requirements related  
8 thereto; (ii) applicable receiving water quality standards  
9 requirements; (iii) requirements of standards of performance for new  
10 sources; (iv) pretreatment requirements; (v) termination and  
11 modification of permits for cause; (vi) requirements for public  
12 notices and opportunities for public hearings; (vii) appropriate  
13 relationships with the secretary of the army in the administration of  
14 his or her responsibilities which relate to anchorage and navigation,  
15 with the administrator of the environmental protection agency in the  
16 performance of his or her duties, and with other governmental  
17 officials under the federal clean water act; (viii) requirements for  
18 inspection, monitoring, entry, and reporting; (ix) enforcement of the  
19 program through penalties, emergency powers, and criminal sanctions;  
20 (x) a continuing planning process; and (xi) user charges.

21 (b) The power to establish and administer state programs in a  
22 manner which will ensure the procurement of moneys, whether in the  
23 form of grants, loans, or otherwise; to assist in the construction,  
24 operation, and maintenance of various water pollution control  
25 facilities and works; and the administering of various state water  
26 pollution control management, regulatory, and enforcement programs.

27 (c) The power to develop and implement appropriate programs  
28 pertaining to continuing planning processes, area-wide waste  
29 treatment management plans, and basin planning.

30 (2) The governor shall have authority to perform those actions  
31 required of him or her by the federal clean water act.

32 (3) By July 31, 2012, the department shall:

33 (a) Reissue without modification and for a term of one year any  
34 national pollutant discharge elimination system municipal stormwater  
35 general permit applicable to western Washington municipalities first  
36 issued on January 17, 2007; and

37 (b) Issue an updated national pollutant discharge elimination  
38 system municipal stormwater general permit applicable to western  
39 Washington municipalities for any permit first issued on January 17,

1       2007. An updated permit issued under this subsection shall become  
2 effective beginning August 1, 2013.

3           (i) Provisions of the updated permit issued under (b) of this  
4 subsection relating to new requirements for low-impact development  
5 and review and revision of local development codes, rules, standards,  
6 or other enforceable documents to incorporate low-impact development  
7 principles must be implemented simultaneously. These requirements may  
8 go into effect no earlier than December 31, 2016, or the time of the  
9 scheduled update under RCW 36.70A.130(5), as existing on July 10,  
10 2012, whichever is later.

11          (ii) Provisions of the updated permit issued under (b) of this  
12 subsection related to increased catch basin inspection and illicit  
13 discharge detection frequencies and application of new stormwater  
14 controls to projects smaller than one acre may go into effect no  
15 earlier than December 31, 2016, or the time of the scheduled update  
16 under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is  
17 later.

18           (4) By July 31, 2012, the department shall:

19           (a) Reissue without modification and for a term of two years any  
20 national pollutant discharge elimination system municipal stormwater  
21 general permit applicable to eastern Washington municipalities first  
22 issued on January 17, 2007; and

23           (b) Issue an updated national pollutant discharge elimination  
24 system municipal stormwater general permit for any permit first  
25 issued on January 17, 2007, applicable to eastern Washington  
26 municipalities. An updated permit issued under this subsection  
27 becomes effective August 1, 2014.

28           NEW SECTION. **Sec. 5.** A new section is added to chapter 90.48  
29 RCW to read as follows:

30           (1) All powers, duties, and functions of the department of  
31 ecology pertaining to this chapter as it relates to the regulation of  
32 pesticides used to control burrowing shrimp on tidelands in Willapa  
33 Bay and Grays Harbor are transferred to the department of agriculture  
34 effective July 1, 2020. All references to the director or the  
35 department of ecology in the Revised Code of Washington mean the  
36 director or the department of agriculture when referring to the  
37 functions transferred in this section. The department shall work  
38 expeditiously with the department of agriculture to obtain any and  
39 all approvals for the department of agriculture to assume national

1 pollutant discharge elimination system permit issuance and  
2 enforcement authority for the regulation of pesticides used to  
3 control burrowing shrimp on tidelands in Willapa Bay and Grays Harbor  
4 under the federal clean water act.

5 (2) (a) All reports, documents, surveys, books, records, files,  
6 papers, or written material in the possession of the department of  
7 ecology pertaining to the powers, duties, and functions transferred  
8 must be delivered to the custody of the department of agriculture.  
9 All cabinets, furniture, office equipment, motor vehicles, and other  
10 tangible property employed by the department of ecology in carrying  
11 out the powers, duties, and functions transferred must be made  
12 available to the department of agriculture. All funds, credits, or  
13 other assets held in connection with the powers, duties, and  
14 functions transferred are assigned to the department of agriculture.

15 (b) Any appropriations made to the department of ecology for  
16 carrying out the powers, duties, and functions transferred are, on  
17 the effective date of this section, transferred and credited to the  
18 department of agriculture.

19 (c) Whenever any question arises as to the transfer of any  
20 personnel, funds, books, documents, records, papers, files,  
21 equipment, or other tangible property used or held in the exercise of  
22 the powers and the performance of the duties and functions  
23 transferred, the director of financial management shall make a  
24 determination as to the proper allocation and certify the same to the  
25 state agencies concerned.

26 (3) All employees of the department of ecology engaged in  
27 performing the powers, duties, and functions transferred are  
28 transferred to the jurisdiction of the department of agriculture. All  
29 employees classified under chapter 41.06 RCW, the state civil service  
30 law, are assigned to the department of agriculture to perform their  
31 usual duties upon the same terms as formerly, without any loss of  
32 rights, subject to any action that may be appropriate thereafter in  
33 accordance with the laws and rules governing state civil service.

34 (4) All rules and all pending business before the department of  
35 ecology pertaining to the powers, duties, and functions transferred  
36 shall be continued and acted upon by the department of agriculture.  
37 All existing contracts and obligations remain in full force and shall  
38 be performed by the department of agriculture.

1       (5) The transfer of the powers, duties, functions, and personnel  
2 of the department of ecology does not affect the validity of any act  
3 performed before the effective date of this section.

4       (6) If apportionments of budgeted funds are required because of  
5 the transfers directed by this section, the director of financial  
6 management shall certify the apportionments to the agencies affected,  
7 the state auditor, and the state treasurer. Each of these shall make  
8 the appropriate transfer and adjustments in funds and appropriation  
9 accounts and equipment records in accordance with the certification.

10      (7) All classified employees of the department of ecology  
11 assigned to the department of agriculture under this section whose  
12 positions are within an existing bargaining unit description at the  
13 department of agriculture must become a part of the existing  
14 bargaining unit at the department of agriculture and are considered  
15 an appropriate inclusion or modification of the existing bargaining  
16 unit under the provisions of chapter 41.80 RCW.

17      NEW SECTION. **Sec. 6.** The sum of five hundred thousand dollars,  
18 or as much thereof as may be necessary, is appropriated for the  
19 fiscal year ending June 30, 2020, from the state general fund to the  
20 department of ecology for the purpose of conducting a study on the  
21 use of imidacloprid for the control of burrowing shrimp in Willapa  
22 Bay and Grays Harbor.

23      NEW SECTION. **Sec. 7.** (1)(a) The sum of one million dollars, or  
24 as much thereof as may be necessary, is appropriated for the fiscal  
25 biennium ending June 30, 2021, from the state toxics control account  
26 to the department of agriculture for the purposes of studying the  
27 impacts of the use of imidacloprid as a means to control burrowing  
28 shrimp and related costs, and to continue efforts to employ an  
29 accepted integrated pest management approach to managing the  
30 burrowing shrimp infestation in Willapa Bay and Grays Harbor.

31      (b) Permissible department expenses include, but are not limited  
32 to, oversight and participation on a technical advisory committee,  
33 technical assistance, planning, and reporting activities.

34      (c) The department of agriculture may also use the funding  
35 provided in this section, as needed, for payments to Washington State  
36 University, the United States department of agriculture, and outside  
37 consultants for their participation in the monitoring program and  
38 technical advisory committee.

1       (2) The department of agriculture must report to the appropriate  
2 committees of the legislature by June 30, 2020, on the progress and  
3 results of the monitoring program.

4       **Sec. 8.** RCW 43.21C.0383 and 2008 c 37 s 2 are each amended to  
5 read as follows:

6           The following waste discharge permit actions are not subject to  
7 the requirements of RCW 43.21C.030(2)(c):

8           (1) For existing discharges, the issuance, reissuance, or  
9 modification of a waste discharge permit that contains conditions no  
10 less stringent than federal effluent limitations and state rules;

11          (2) The issuance of a construction stormwater general permit  
12 under chapter 90.48 RCW for a proposal disturbing less than five  
13 acres. The exemption in this subsection does not apply if, under  
14 rules adopted by the department of ecology, the proposal would  
15 otherwise be subject to the requirements of RCW 43.21C.030(2)(c); and

16          (3) The issuance of a national pollutant discharge elimination  
17 system permit or waste discharge permit pursuant to section 2 or 3 of  
18 this act for the use of pesticides to control infestations of  
19 burrowing shrimp in association with the cultivation of shellfish.

20        NEW SECTION. **Sec. 9.** This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of  
22 the state government and its existing public institutions, and takes  
23 effect immediately.

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