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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5633

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State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Snyder, Swecker, Hargrove, Haugen, Morton, Hochstatter, Owen and Rasmussen)

Read first time 03/06/95.

1 AN ACT Relating to weed control; amending RCW 90.58.030, 17.10.010,  
2 and 90.48.020; adding a new section to chapter 90.48 RCW; adding a new  
3 chapter to Title 17 RCW; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

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

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

1 (3) 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 (4) 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 (5) 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 (6) 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 (7) 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 (8) The presence of noxious weeds on public lands constitutes a  
35 public nuisance and negatively impacts public and private lands. The  
36 legislature finds that control and eradication of noxious weeds on  
37 private lands is in the public interest.

1        NEW SECTION.    **Sec. 2.**    This state is facing an environmental  
2 disaster that will affect other states as well as other nations. The  
3 legislature finds that six years is sufficient time for state agencies  
4 to debate solutions to the spartina problem that is occurring in state  
5 waters. The purpose of this act is to focus agency action on control  
6 and future eradication of spartina. It is the mandate of the  
7 legislature that one state agency be responsible for a unified effort  
8 to eliminate spartina, with the advice of the state noxious weed  
9 control board, and that state agency shall be directly accountable to  
10 the legislature on the progress of the spartina eradication program.

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

13        The director shall approve water quality permits to federal, state,  
14 and local agencies, and licensed applicators for the purpose of  
15 utilizing surfactants and federally approved herbicides for aquatic  
16 noxious weed control subject only to compliance with federal labeling  
17 requirements, the federal insecticide, fungicide, and rodenticide act,  
18 the noxious weed control board act, the Washington pesticide control  
19 act, the Washington pesticide application act, the state environmental  
20 policy act, and applicable environmental impact statements. The  
21 director shall not utilize this permit authority to otherwise condition  
22 or burden weed control efforts. The director's authority to issue  
23 water quality permits for activities other than the application of  
24 surfactants and approved herbicides, to control aquatic noxious weeds,  
25 is unaffected by this section.

26        NEW SECTION.    **Sec. 4.**    (1) All activities solely for the removal  
27 and control of *Spartina alterniflora*, *Spartina anglica*, and *Spartina*  
28 *patens* shall not require hydraulic project approval.

29        (2) All activities solely for removal and control of purple  
30 loosestrife that are performed with hand-held tools or hand-held  
31 equipment shall not require a hydraulic project approval.

32        (3) By June 30, 1997, the department of fish and wildlife shall  
33 develop a pamphlet for other aquatic noxious weed removal and control  
34 projects that will use, divert, obstruct, or change the natural flow or  
35 bed of any of the salt or fresh waters of the state. Following  
36 adoption of the pamphlet by rule, the pamphlet shall serve as a

1 hydraulic project approval for aquatic noxious weed control for most  
2 control activities.

3 (4) Nothing in this section shall prohibit the department of fish  
4 and wildlife from requiring a hydraulic project approval for those  
5 parts of hydraulic projects that are not specifically for aquatic  
6 noxious weed control or removal.

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

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

11 (1) Administration:

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

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

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

17 (d) "Person" means an individual, partnership, corporation,  
18 association, organization, cooperative, public or municipal  
19 corporation, or agency of the state or local governmental unit however  
20 designated;

21 (e) "Hearing board" means the shoreline hearings board established  
22 by this chapter.

23 (2) Geographical:

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

26 (b) "Ordinary high water mark" on all lakes, streams, and tidal  
27 water is that mark that will be found by examining the bed and banks  
28 and ascertaining where the presence and action of waters are so common  
29 and usual, and so long continued in all ordinary years, as to mark upon  
30 the soil a character distinct from that of the abutting upland, in  
31 respect to vegetation as that condition exists on June 1, 1971, as it  
32 may naturally change thereafter, or as it may change thereafter in  
33 accordance with permits issued by a local government or the department:  
34 PROVIDED, That in any area where the ordinary high water mark cannot be  
35 found, the ordinary high water mark adjoining salt water shall be the  
36 line of mean higher high tide and the ordinary high water mark  
37 adjoining fresh water shall be the line of mean high water;

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

3 (d) "Shorelines" means all of the water areas of the state,  
4 including reservoirs, and their associated wetlands, together with the  
5 lands underlying them; except (i) shorelines of state-wide  
6 significance; (ii) shorelines on segments of streams upstream of a  
7 point where the mean annual flow is twenty cubic feet per second or  
8 less and the wetlands associated with such upstream segments; and (iii)  
9 shorelines on lakes less than twenty acres in size and wetlands  
10 associated with such small lakes;

11 (e) "Shorelines of state-wide significance" means the following  
12 shorelines of the state:

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

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

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

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

21 (C) Hood Canal--from Tala Point to Foulweather Bluff,

22 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,  
23 and

24 (E) Padilla Bay--from March Point to William Point;

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

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

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

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

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

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

3 (f) "Wetlands" or "wetland areas" means those lands extending  
4 landward for two hundred feet in all directions as measured on a  
5 horizontal plane from the ordinary high water mark; floodways and  
6 contiguous floodplain areas landward two hundred feet from such  
7 floodways; and all marshes, bogs, swamps, and river deltas associated  
8 with the streams, lakes, and tidal waters which are subject to the  
9 provisions of this chapter; the same to be designated as to location by  
10 the department of ecology: PROVIDED, That any county or city may  
11 determine that portion of a one-hundred-year-flood plain to be included  
12 in its master program as long as such portion includes, as a minimum,  
13 the floodway and the adjacent land extending landward two hundred feet  
14 therefrom;

15 (g) "Floodway" means those portions of the area of a river valley  
16 lying streamward from the outer limits of a watercourse upon which  
17 flood waters are carried during periods of flooding that occur with  
18 reasonable regularity, although not necessarily annually, said floodway  
19 being identified, under normal condition, by changes in surface soil  
20 conditions or changes in types or quality of vegetative ground cover  
21 condition. The floodway shall not include those lands that can  
22 reasonably be expected to be protected from flood waters by flood  
23 control devices maintained by or maintained under license from the  
24 federal government, the state, or a political subdivision of the state.

25 (3) Procedural terms:

26 (a) "Guidelines" means those standards adopted to implement the  
27 policy of this chapter for regulation of use of the shorelines of the  
28 state prior to adoption of master programs. Such standards shall also  
29 provide criteria to local governments and the department in developing  
30 master programs;

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

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

38 (d) "Development" means a use consisting of the construction or  
39 exterior alteration of structures; dredging; drilling; dumping;

1 filling; removal of any sand, gravel, or minerals; bulkheading; driving  
2 of piling; placing of obstructions; or any project of a permanent or  
3 temporary nature which interferes with the normal public use of the  
4 surface of the waters overlying lands subject to this chapter at any  
5 state of water level;

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

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

14 (ii) Construction of the normal protective bulkhead common to  
15 single family residences;

16 (iii) Emergency construction necessary to protect property from  
17 damage by the elements;

18 (iv) Construction and practices normal or necessary for farming,  
19 irrigation, and ranching activities, including agricultural service  
20 roads and utilities on wetlands, and the construction and maintenance  
21 of irrigation structures including but not limited to head gates,  
22 pumping facilities, and irrigation channels: PROVIDED, That a feedlot  
23 of any size, all processing plants, other activities of a commercial  
24 nature, alteration of the contour of the wetlands by leveling or  
25 filling other than that which results from normal cultivation, shall  
26 not be considered normal or necessary farming or ranching activities.  
27 A feedlot shall be an enclosure or facility used or capable of being  
28 used for feeding livestock hay, grain, silage, or other livestock feed,  
29 but shall not include land for growing crops or vegetation for  
30 livestock feeding and/or grazing, nor shall it include normal livestock  
31 wintering operations;

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

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

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

6 (viii) Operation, maintenance, or construction of canals,  
7 waterways, drains, reservoirs, or other facilities that now exist or  
8 are hereafter created or developed as a part of an irrigation system  
9 for the primary purpose of making use of system waters, including  
10 return flow and artificially stored ground water for the irrigation of  
11 lands;

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

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

19 (xi) Any action commenced prior to December 31, 1982, pertaining to  
20 (A) the restoration of interim transportation services as may be  
21 necessary as a consequence of the destruction of the Hood Canal bridge,  
22 including, but not limited to, improvements to highways, development of  
23 park and ride facilities, and development of ferry terminal facilities  
24 until a new or reconstructed Hood Canal bridge is open to traffic; and  
25 (B) the reconstruction of a permanent bridge at the site of the  
26 original Hood Canal bridge;

27 (xii) The process of removal or control of aquatic noxious weeds,  
28 listed as such under RCW 17.10.080 or 17.10.090, such as spartina,  
29 through the use of an herbicide or other treatment methods that are  
30 consistent with an applicable environmental impact statement.

31 **Sec. 6.** RCW 17.10.010 and 1987 c 438 s 1 are each amended to read  
32 as follows:

33 Unless a different meaning is plainly required by the context, the  
34 following words and phrases as hereinafter used in this chapter shall  
35 have the following meanings:

36 (1) "Noxious weed" means any plant which when established is highly  
37 destructive, competitive, or difficult to control by cultural or  
38 chemical practices.

1 (2) "State noxious weed list" means a list of noxious weeds adopted  
2 by the state noxious weed control board which list is divided into  
3 three classes:

4 (a) Class A shall consist of those noxious weeds not native to the  
5 state that are of limited distribution or are unrecorded in the state  
6 and that pose a serious threat to the state;

7 (b) Class B shall consist of those noxious weeds not native to the  
8 state that are of limited distribution or are unrecorded in a region of  
9 the state and that pose a serious threat to that region;

10 (c) Class C shall consist of any other noxious weeds.

11 (3) "Person" means any individual, partnership, corporation, firm,  
12 the state or any department, agency, or subdivision thereof, or any  
13 other entity.

14 (4) "Owner" means the person in actual control of property, or his  
15 agent, whether such control is based on legal or equitable title or on  
16 any other interest entitling the holder to possession and, for purposes  
17 of liability, pursuant to RCW 17.10.170 or 17.10.210, means the  
18 possessor of legal or equitable title or the possessor of an easement:  
19 PROVIDED, That when the possessor of an easement has the right to  
20 control or limit the growth of vegetation within the boundaries of an  
21 easement, only the possessor of such easement shall be deemed, for the  
22 purpose of this chapter, an "owner" of the property within the  
23 boundaries of such easement.

24 (5) As pertains to the duty of an owner, the words "control",  
25 "contain", "eradicate", and the term "prevent the spread of noxious  
26 weeds" shall mean conforming to the standards of noxious weed control  
27 or prevention adopted by rule or regulation by the state noxious weed  
28 control board and an activated county noxious weed control board.

29 (6) "Agent" means any occupant or any other person acting for the  
30 owner and working or in charge of the land.

31 (7) "Agricultural purposes" are those which are intended to provide  
32 for the growth and harvest of food and fiber.

33 (8) "Director" means the director of the department of agriculture  
34 or the director's appointed representative.

35 (9) "Weed district" means a weed district as defined in chapters  
36 17.04 and 17.06 RCW.

37 (10) "Aquatic noxious weed" means an aquatic plant species that is  
38 listed on the state weed list under RCW 17.10.080.

1       **Sec. 7.** RCW 90.48.020 and 1987 c 109 s 122 are each amended to  
2 read as follows:

3       Whenever the word "person" is used in this chapter, it shall be  
4 construed to include any political subdivision, government agency,  
5 municipality, industry, public or private corporation, copartnership,  
6 association, firm, individual or any other entity whatsoever.

7       Wherever the words "waters of the state" shall be used in this  
8 chapter, they shall be construed to include lakes, rivers, ponds,  
9 streams, inland waters, underground waters, salt waters and all other  
10 surface waters and watercourses within the jurisdiction of the state of  
11 Washington.

12       Whenever the word "pollution" is used in this chapter, it shall be  
13 construed to mean such contamination, or other alteration of the  
14 physical, chemical or biological properties, of any waters of the  
15 state, including change in temperature, taste, color, turbidity, or  
16 odor of the waters, or such discharge of any liquid, gaseous, solid,  
17 radioactive, or other substance into any waters of the state as will or  
18 is likely to create a nuisance or render such waters harmful,  
19 detrimental or injurious to the public health, safety or welfare, or to  
20 domestic, commercial, industrial, agricultural, recreational, or other  
21 legitimate beneficial uses, or to livestock, wild animals, birds, fish  
22 or other aquatic life.

23       Wherever the word "department" is used in this chapter it shall  
24 mean the department of ecology.

25       Whenever the word "director" is used in this chapter it shall mean  
26 the director of ecology.

27       Whenever the words "aquatic noxious weed" are used in this chapter,  
28 they mean aquatic plant species that are listed on the state weed list  
29 under RCW 17.10.080.

30       NEW SECTION. **Sec. 8.** 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. 9.** Spartina removal shall include restoration  
35 to return intertidal land and other infested lands to the condition  
36 found on adjacent unaffected lands in the same tidal elevation. The  
37 department of fish and wildlife, the department of ecology, the

1 department of agriculture, and the department of natural resources  
2 shall develop a restoration plan in cooperation with owners of spartina  
3 infested lands and shall submit the plan to the legislature by December  
4 31, 1995.

5 NEW SECTION. **Sec. 10.** (1) The state department of agriculture is  
6 the lead agency for the control of spartina with the advice of the  
7 state noxious weed control board.

8 (2) Responsibilities of the lead agency include:

9 (a) Coordination of the control program including memorandums of  
10 understanding, contracts, and agreements with local, state, federal,  
11 and tribal governmental entities and private parties;

12 (b) Preparation of a state-wide spartina management plan utilizing  
13 integrated vegetation management strategies that encompass all of  
14 Washington's tidelands. The plan shall be developed in cooperation  
15 with local, state, federal, and tribal governments, private landowners,  
16 and concerned citizens. The plan shall prioritize areas for control,  
17 including directing on the ground control efforts that include, but are  
18 not limited to: (i) Control work and contracts; (ii) spartina survey;  
19 (iii) collection and maintenance of spartina location data; (iv)  
20 purchasing equipment, goods, and services; (v) survey of threatened and  
21 endangered species; and (vi) site-specific environmental information  
22 and documents; and

23 (c) Evaluating the effectiveness of the control efforts.

24 The lead agency shall report no later than May 15th and December  
25 15th of each year on the progress of the program, the number of acres  
26 treated by various methods of control, and on the funds spent.

27 NEW SECTION. **Sec. 11.** The department of agriculture shall work in  
28 close conjunction with the state weed board. The department of  
29 agriculture may grant funds to other state agencies, local governments,  
30 and nonprofit corporations for eradication purposes and may use those  
31 moneys itself. The department of agriculture may match private funds  
32 for eradication programs on private property on a fifty-fifty matching  
33 basis. The accounting and supervision of the funds at the local level  
34 shall be conducted by the department of agriculture.

1        NEW SECTION.    **Sec. 12.**    The department of natural resources is  
2 responsible for spartina control on state-owned aquatic lands managed  
3 by the department of natural resources.

4        NEW SECTION.    **Sec. 13.**    Facilitating the control of spartina is a  
5 high priority for all state agencies.

6        NEW SECTION.    **Sec. 14.**    The department of fish and wildlife is  
7 responsible for spartina control on state-owned aquatic lands managed  
8 by the department of fish and wildlife.

9        NEW SECTION.    **Sec. 15.**    The state parks and recreation commission  
10 is responsible for spartina control on state-owned aquatic lands  
11 managed by the state parks and recreation commission.

12       NEW SECTION.    **Sec. 16.**    Sections 1, 2, 4, and 8 through 15 of this  
13 act shall constitute a new chapter in Title 17 RCW.

14       NEW SECTION.    **Sec. 17.**    If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

18       NEW SECTION.    **Sec. 18.**    This act is necessary for the immediate  
19 preservation of the public peace, health, or safety, or support of the  
20 state government and its existing public institutions, and shall take  
21 effect immediately.

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