

# House Bill Analysis

## HB 2376

HOUSE AGRICULTURE AND ECOLOGY COMMITTEE

January 21,  
2000

- Specifies the inspection authority of the Department of Agriculture under the nursery laws, for inspecting both plants and facilities; and broadens the types of infestations— for which plants may be regulated.
- Alters where the Department may file actions to enjoin violations and may conduct investigatory hearings under the nursery laws.
- Alters the types of plants regulated under the nursery laws, broadens the services-for-fees that may be afforded by the Department upon request to include services for any agricultural commodity, and authorizes compliance agreements.
- No longer lists certain labeling requirements and actions that constitute misrepresentations in sales of horticultural plants.
- Authorizes counties to establish a new assessment on lands for supporting Horticultural Pest and Disease Boards.

### **BACKGROUND:**

**NURSERY LAWS.** Retail and wholesale nursery dealers must be licensed under the state's horticultural plants and facilities laws, often called the nursery laws. Horticultural plants, other than vegetables and certain plant parts used for propagation purposes, are regulated under the nursery laws. These laws are administered by the Department of Agriculture. (Chapter 1.13 RCW and RCW 15.13.250(4).)

No person may sell or transport a horticultural plant in the state unless it meets standards for freedom from infestation by plant pests and other requirements set under the nursery laws. Horticultural plants shipped into the state must be accompanied by an inspection certificate stating that the plants meet these standards and requirements. (RCW 15.13.390 and .400.) Inspections for enforcing the nursery laws are authorized, as are inspection and certification services conducted by the department upon request on a fee-for-service basis. (RCW 15.13.260, .265, .370, and .380.)

Under the nursery laws, an assessment is levied on the wholesale sales of fruit trees, fruit tree related ornamental trees, and fruit tree rootstock produced in the state. (RCW 15.13.310.)

Revenues from the assessments are deposited in the Northwest Nursery Fund and may be used

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only for fruit tree and fruit tree related ornamental tree certification and nursery improvement programs. All other monies collected under the nursery laws, including nursery licensing fees, are deposited in an account in the Agricultural Local Fund and may be used to carry out the nursery laws. (RCW 15.13.470.) Revenues from any nursery dealer license fee surcharge (authorized by the nursery laws for establishment by rule) are dedicated to supporting research projects for the benefit of the nursery industry. (RCW 15.13.285.)

The nursery laws create two advisory committees: one for advising the Director of Agriculture regarding the administration of the nursery laws generally, and one for advising the Director regarding a fruit tree and fruit tree related ornamental tree certification and nursery improvement programs. (RCW 15.13.320 and .335.)

HORTICULTURAL PEST AND DISEASE BOARDS. State law allows counties to create horticultural pest and disease boards to prevent and control the spread of pests and diseases. (RCW 15.09.010 and .020.) Operating monies for such a pest and disease board may be provided through a horticulture tax— that may be levied by the county for this purpose. (RCW 15.08.260 and 15.09.130.) It is the duty of an owner of property to control horticultural pests and diseases. RCW 15.09.060.) A pest and disease board may petition the superior court to require the removal of infested plants from property at the owner's expense. (RCW 15.09.080.)

I-695. Initiative No. 695 requires that any tax increase imposed by the state receive voter approval. The taxes— governed by this requirement include, with certain express exemptions, any monetary charge by government. The state is defined to include, among others, counties. (Section 2, I-695.)

## **SUMMARY:**

I. NURSERY LAWS. General Provisions. The horticultural plants and facilities laws are amended. Vegetables are no longer excluded as a group from the plants regulated under these laws; however, potatoes, garlic, and onion planting stock are specifically excluded. Turf is now more uniformly regulated under these laws in the same manner as other horticultural plants. Viroids and phytoplasma are expressly added to the list of things that may be considered to be plant pests under these laws. Added to the criteria used in considering whether something is a plant pest is whether it threatens the diversity or abundance of native species. (Section 1(4)& (6).) The infestations for which the Director may condemn horticultural plants are no longer limited to infestations of insects. (Section 23.)

Inspections and Actions. Inspections that may be conducted under these laws expressly include taking samples, destructive testing, conducting interviews, taking photographs, and examining records. A place where records, required under the nursery laws, are kept is now

regulated as a horticultural facility. (Section 1(5)&(7).) The Director is expressly authorized to enter and inspect any horticultural facility, including such a place for records and vehicles and equipment used to transport horticultural plants. (Sections 1(5) and 4(1).)

Warrants may be issued on probable cause. It is sufficient probable cause to show that: the inspection is pursuant to a general administrative practice to determine compliance with the nursery laws or rules; or the Director has reason to believe that a violation of these laws has occurred, is occurring, or may occur. (Section 4(2).)

The Director may bring an action enjoin a violation of the nursery laws or rules in Thurston County Superior Court, not just the superior court in which the violation occurs. (Section 26.) A hearing for which subpoenas may be issued by the Director compelling the attendance of witnesses or production of documents must no longer be held in the county in which the licensee resides and is no longer limited to matters regarding just a licensee, but may be for investigating compliance with any aspect of the nursery laws or rules. Certain witnesses are no longer entitled to receiving witness fees. (Section 14.) No state court may allow the recovery of damages from an administrative action, hold order, or condemnation order if there was probable cause for the action. (Section 25.)

Any shipment found not to be in compliance with the nursery laws may be returned to the consignor at the consignor's expense. Subsequently, the consignor may request a hearing. The consignor is the person listed on a shipping document as being the one from whom a plant was received for shipment. (Sections 1(15) and 18.)

Services; Agreements. Upon request, the Director may provide special inspection or certifications for any agricultural commodity and prescribe a fee for the service. (Section 15.) The Director is expressly authorized to enter compliance agreements with the person growing, handling, or moving articles regulated under any of the state's agricultural laws in Title 15 RCW to the extent that the agreement carries out the nursery laws. Such an agreement is one in which the person agrees to comply with stipulated requirements. (Sections 1(14) and 29.)

The Director may now refuse to perform an inspection or certification service under the nursery laws for a person who fails to pay the assessments required by an agricultural commodity commission. It is clarified that the payments for which a person who is in arrears— may be refused service under current law includes payments of tree fruit related assessments levied under the nursery laws. (Section 16.)

Labeling. The Director is now required (not simply authorized) to adopt rules for labeling or tagging horticultural plants. (Section 2.) The specific plants that must be marked or tagged for retail sales or shipments in the state are no longer listed. Each unit of sale of plants on display for sale (other than floricultural plants) is no longer required by statute to be tagged. (Section 19.) Examples of unlawful misrepresentations in the sale of horticultural plants are no longer listed. It is no longer unlawful to sell a horticultural plant that is dead, in a dying condition, seriously broken, frozen, or damaged or that is potbound. It is now unlawful to substitute any agricultural commodity for a commodity or plan that is covered by an

inspection certificate. (Section 20.)

Fiscal. Monies from civil penalties levied under the nursery laws must be deposited in the Nursery Research Account in the Agricultural Local Fund. (Section 29.) If it is clarified that licensing fees for a nursery dealer are to be based on the gross annual sales of horticultural plants at each of the dealer's place of business. (Section 6.) The amount of the annual assessment currently set by the Director on sales of fruit trees, fruit tree related ornamentals, and fruit tree rootstock must now expressly be set to carry out programs conducted under the planting stock laws, not just the nursery laws. (Section 10.)

Other. In appointing members to an advisory committee regarding fruit tree certification and nursery improvement, the Director must now consider names submitted by the Washington State Nursery and Landscape Association, rather than having to appoint the members from the names submitted by the association. (Section 11.) In addition to those currently authorized with governmental agencies, the Director is expressly authorized to enter into agreements with other organizations to carry out the purposes of the nursery laws. (Section 30.)

**II. HORTICULTURE PEST AND DISEASE BOARDS. New Horticultural Assessment.** A horticultural pest and disease board may now be funded through a new assessment. Before the assessment is levied, the board must hold a hearing to gather information to serve as a basis for classifying lands and then must classify the lands including classes for: orchard lands, range lands, dry lands, nonuse lands, forest lands, or federal lands. The board must forward to its county legislative authority a proposed level of assessment for each class. The assessment rate may be uniform per acre in its respective class, a flat rate per parcel, or a flat rate per parcel rate plus a uniform rate per acre. If no benefits are found to accrue to a class of land, a zero assessment may be levied.

After a hearing, the county legislative authority must accept or modify, or refer back to the horticultural pest and disease board for its reconsideration, all or any portion of the proposed levels of assessment. The amount of the assessment constitutes a lien against property. Assessments are to be collected by the county treasurer. (Section 34.)

Other. The boards are expressly authorized to enter into agreements with other entities to carry out certain duties regarding pests and diseases. (Section 35.)

