

SENATE BILL REPORT

ESSB 6040

As Amended by House, March 12, 2014

Title: An act relating to invasive species.

Brief Description: Concerning invasive species.

Sponsors: Senate Committee on Natural Resources & Parks (originally sponsored by Senators Honeyford, Hargrove, Pearson, Ranker, Parlette and Sheldon; by request of Department of Fish and Wildlife).

Brief History:

Committee Activity: Natural Resources & Parks: 1/21/14, 2/04/14 [DPS-WM].

Ways & Means: 2/10/14, 2/11/14 [DPS(NRP)].

Passed Senate: 2/14/14, 48-0.

Passed House: 3/12/14, 97-1.

Brief Summary of Engrossed Substitute Bill

- Revises the aquatic invasive species (AIS) classification system.
- Provides AIS-related rapid response, infested site management, and quarantine authorities.
- Authorizes AIS inspection, decontamination, and mandatory check stations.
- Establishes AIS-related enforcement authorities, infractions and crimes.
- Provides a portion of watercraft excise tax revenues for AIS prevention and enforcement.

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 6040 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Pearson, Chair; Liias, Ranking Member; Dansel, Hargrove, Hewitt, Kline and Parlette.

Staff: Curt Gavigan (786-7437)

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.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6040 as recommended by Committee on Natural Resources & Parks be substituted therefor, and the substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Assistant Ranking Member on the Operating Budget; Bailey, Becker, Billig, Braun, Conway, Dammeier, Fraser, Hasegawa, Hatfield, Hewitt, Kohl-Welles, Padden, Parlette, Rivers, Schoesler and Tom.

Staff: Sherry McNamara (786-7402)

Background: Classification and Regulation of Aquatic Animal Species. The Fish and Wildlife Commission (Commission) has the authority to classify species as a prohibited aquatic animal species or regulated aquatic animal species, depending on the risk level and any beneficial use of the species. Unless authorized by the Department of Fish and Wildlife (DFW), it is generally illegal to possess, transport, propagate, buy, sell, or release a prohibited or regulated aquatic animal species. The release of a regulated aquatic animal species or a species that has not yet been classified is also illegal. In general these offenses are punishable as gross misdemeanors.

When the Commission identifies a prohibited aquatic animal species infestation, DFW must develop a rapid response plan to address potential actions such as eradication, containment, enforcement, and public education. DFW and other agencies may post signs at an infestation site to identify the infestation and notify the public of potential penalties for possessing and transporting these species.

AIS Enforcement. In general anyone that has used a commercial or recreational watercraft outside of the state must have documentation that the watercraft is free of AIS. A violation of this requirement is an infraction. DFW must adopt rules to implement the documentation requirement, including identifying the types of allowable documentation.

Specifically, DFW may require anyone transporting a watercraft to stop at a check station and failure to do so is a gross misdemeanor. Check stations must be plainly marked and operated by at least one DFW Officer. A person with a watercraft that is contaminated with invasive species must bear the expense for any necessary impoundment, transportation, or decontamination. However, a person who stops at a check station and complies with DFW directives is exempt from AIS-related criminal penalties and forfeiture.

Watercraft Excise Tax. The watercraft excise tax is an annual tax on the fair market value of most non-commercial vessels of 16 feet or more required to register with the Department of Licensing. This tax is in lieu of the property tax, and its rate is 0.5 percent with a minimum amount of \$5.

Summary of Engrossed Substitute Bill: Specifies General Invasive Species Authority. DFW is designated as the state's lead agency for managing many types of invasive species, both aquatic and terrestrial. Subject to the availability of funding, DFW may conduct activities to include the following: monitoring and rapid response actions; conducting

education and outreach; aligning standards, classifications, and enforcement provisions with regional, national, and international provisions; and providing technical assistance or other support to government entities and private groups.

AIS Classification System. A new AIS classification system framework is established, similar to the existing classification system but with more potential classification options. DFW must adopt species classifications in consultation with the Invasive Species Council (Council). The framework is as follows:

- *Prohibited Species.* Prohibited species are a priority for prevention and management actions. There are three categories of prohibited species: level 1 species pose a high invasive risk and are a priority for prevention and rapid response actions; level 2 species pose a high invasive risk and are a priority for infested site management; and level 3 species pose a moderate to high invasive risk and may be appropriate for prevention or management action;
- *Regulated Species.* There are three classifications for regulated species. Type A species pose a low to moderate invasive risk and have a beneficial use; type B species pose a low or unknown risk and are used for personal or commercial uses, such as aquariums; and type C species pose a low or unknown risk and do not qualify as a type B species; and
- Interim classifications are provided until new rules are adopted by DFW.

Rapid Response, Infested Site Management, and Quarantine Authorities. When a prohibited level 1 species is detected, DFW may implement rapid response management actions to contain, control, or eradicate the species. DFW may utilize an incident command system if the action exceeds seven days, and may cooperate with other agencies, specified entities, and private landowners. In implementing a rapid response management action, DFW may enter onto property when authorized by a warrant supported by reasonable cause.

Infested site management actions are authorized when a prohibited level 2 species is detected, and may include long-term actions to contain, control, or eradicate the species. DFW must consult with other agencies, specified entities, and private landowners. In implementing an infested site management action, DFW may enter onto property when authorized by a warrant supported by reasonable cause.

DFW may issue a quarantine declaration due to threats posed by a prohibited level 1 or 2 species. The declaration may include a prohibition or limitation on the movement of conveyances or water from an area. DFW may use this authority separately or in conjunction with a rapid response or infested site management action.

Additionally DFW may, in consultation with the Council, request that the Governor order emergency measures in circumstances where prohibited level 1 or 2 species pose an imminent environmental, economic, or human health danger. DFW may implement measures approved by the Governor, which may include the use of pesticides after consultation with other agencies and landowners and evaluation of alternative measures.

Notification, consultation, and appeals procedures are established for the exercise of these AIS management authorities, as well as a requirement that DFW publicly list infested water bodies. In exercising these authorities, DFW must endeavor to contain, control, and eradicate

AIS while protecting human safety and minimizing impacts to the environment and landowners.

AIS Inspections and Decontamination. The scope of vehicles and equipment that must comply with AIS documentation requirements is expanded to any aquatic conveyance entering the state, which includes transportable personal property such as watercraft, watercraft-related equipment, float planes, fish tanker trucks, irrigation equipment, and fishing gear. DFW must implement this requirement by rule, including identifying allowable certificate of inspection forms and the type of conveyances to which the requirement applies.

Anyone using an aquatic conveyance must clean and drain the conveyance after use on a water body or property. This includes removal of visible aquatic plants, animals, other organisms, and water from the water body. DFW may begin enforcing clean and drain provisions on watercraft and seaplanes transporting aquatic plants, but must adopt rules before enforcing the requirement more broadly.

As under current law, DFW may establish mandatory check stations for the inspection of watercraft. DFW may adopt rules covering other types of aquatic conveyances that must stop at check stations. At least one DFW officer, ex-officio officer, or agency representative must be present during check station operation. A person stopped at a check station must allow inspection for AIS and clean and drain requirements, and follow any clean and drain or decontamination orders given.

When encountering an aquatic conveyance with AIS, a DFW officer or ex-officio officer may require decontamination on site, prohibit launch into a water body until decontamination, require immediate transport to a decontamination station, or seize and transport the conveyance to a decontamination station. The specific order depends on the risk and availability of resources, and compliance must occur at the expense of the person in possession of the conveyance.

DFW may operate inspection and decontamination stations, which can be either part of or separate from inspection stations. Authorized representatives with sufficient training may operate inspection, decontamination, and check stations. These stations must be operated consistent with rules established by DFW. Within two years, DFW must submit a recommended fee schedule that DFW-authorized representatives may charge for inspection and decontamination services.

AIS Inspection and Enforcement. DFW officers and ex-officio officers are provided the authority to: temporarily stop persons to inspect aquatic conveyances for AIS or compliance with clean and drain requirements based on reasonable cause; and execute a search or arrest warrant issued by a court based on probable cause that a violation of an invasive species law has occurred.

DFW staff may take samples of invasive species or inspect property or a water body under a warrant issued by a court based on probable cause that an invasive species is present and after seeking the owner's permission for the inspection.

The following acts are established as gross misdemeanors:

- failure to allow inspection while stopped at a check station;
- failure to comply with a decontamination order;
- possession of a prohibited level 1 or 2 species without DFW authorization;
- possession of, introduction of, or trafficking in a prohibited level 3 species without DFW authorization;
- introduction of a regulated type A, B, or C species without DFW authorization;
- failure to clearly identify by species or subspecies name a regulated type B species used for commercial purposes; and
- a knowing violation of a quarantine declaration .

Interfering with DFW personnel authorized by a warrant to conduct a rapid response or infested site management action is included within the existing crime of unlawful interfering in department operations, which is punishable as a gross misdemeanor. A class C felony is established for trafficking or introducing a prohibited level 1 or 2 species without DFW authorization, or if a person commits a second invasive species related act punishable as a gross misdemeanor within five years.

A new infraction is established for failure to follow clean and drain requirements or a clean and drain order.

In addition to criminal penalties, violators are subject to any costs incurred in managing the invasive species and its progeny. Certain exemptions apply to AIS offenses, including those in compliance with directives at a check station, acting in a manner authorized by DFW, or returning AIS caught while fishing into the water.

Funding for AIS Management and Enforcement. A portion of revenue from watercraft excise tax collections is dedicated for AIS purposes: 4 percent in fiscal year 2015; 7 percent in fiscal year 2016; and 10 percent each fiscal year beginning in 2017. The watercraft excise tax funds are provided for AIS purposes: 60 percent of that amount distributed to the AIS prevention account; and 40 percent of that amount distributed to the AIS enforcement account.

Each fiscal year, DFW may use up to a total of \$250,000 of watercraft excise tax deposits into these two accounts for a local management competitive grant program to fund AIS-related projects submitted by agencies, local governments, tribes, and nonprofit groups.

Other. Terms are defined. A number of rulemaking requirements are established. The new invasive species management statutes are located in a new RCW chapter. A number of AIS-related statutes are repealed. An intent section is included.

Appropriation: \$30,000 from the AIS prevention account and \$20,000 from the AIS enforcement account are appropriated for a contract with the Pacific Northwest Economic Region nonprofit association for regional coordination efforts.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Natural Resources & Parks):

PRO: This bill would be a powerful tool in preventing invasive species from entering Washington State. There is some confusion regarding the certificate of inspection from the bill regarding aquatic conveyances. This bill follows recommendations from the Washington Invasive Species Council and would bring Washington more in line with other states. It would enhance the state's capacity to respond to invasive species infestations and promote prevention and early response, which is the most cost-effective solution. Funding mechanisms would be a welcome addition to this bill. While the bill is important, there remain some concerns about implementation of the certificate of inspection required for aquatic conveyances and whether check stations will be effective without an officer present.

Persons Testifying (Natural Resources & Parks): PRO: Senator Honeyford, prime sponsor; Thomas O'Keefe, American Whitewater; Wendy Brown, WA Invasive Species Council; Rosendo Guerrero, WA Council of Trout Unlimited; Marc Daily, Puget Sound Partnership; Diane Cooper, Pacific Coast Shellfish Growers Assn.; Mo McBroom, The Nature Conservancy; Bill Tweit, DFW.

Staff Summary of Public Testimony on Substitute (Ways & Means): PRO: This bill will save our state a lot of money. Currently there are no known AIS infestations in the Northwest and the goal is to keep them out. Quagga mussels are negatively impacting freshwaters in other states, they clog hydroelectric dam intakes, affect fish passage, and damage irrigation and water systems. Investing in prevention will save millions of dollars in avoided costs in the future.

Persons Testifying (Ways & Means): PRO: Senator Honeyford, prime sponsor; Allen Pleus, DFW.

House Amendment(s):

- Removes language redirecting a portion of watercraft excise tax revenues from the general fund to use for AIS prevention and enforcement. This amount would have been 4 percent in fiscal year 2015, 7 percent in fiscal year 2016, and 10 percent in fiscal year 2017 and thereafter.
- Removes language creating a local management competitive grant program to fund AIS-related projects and funded with part of the redirected watercraft excise tax revenues.
- Eliminates two appropriations totaling \$50,000 from AIS-related accounts to DFW for a contract with the Pacific Northwest Economic Region nonprofit organization for regional AIS coordination efforts.