

2 2SSB 5633 - S AMD 124

3 By Senators Snyder, Fraser and Morton

4 ADOPTED 3/10/95

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that:

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

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

21 (3) *Spartina* poses a significant hydrological threat. Clumps and  
22 meadows of spartina are dense environments that bind sediments and lift  
23 the intertidal gradient up out of the intertidal zone through time.  
24 This process reduces flows during flood conditions, raises flood  
25 levels, and significantly alters the hydrological regime of estuarine  
26 areas.

27 (4) *Spartina* spreads by rhizomes and seed production. Through  
28 lateral growth by rhizomes, spartina establishes a dense monotypic  
29 meadow. Through seed production and the spread of seed through the air  
30 and by water, spartina is currently being spread to other states and to  
31 Canadian provinces.

32 (5) Current laws and rules designed to protect the environment and  
33 preserve the wetland habitats, fish, and wildlife of the state are not  
34 designed to respond to an ecosystem-wide threat of this kind. State  
35 and federal agencies, local governments, weed boards, concerned  
36 individuals, and property owners attempting to deal with this emergency

1 have been frustrated by interagency disagreements, demands for an undue  
2 amount of procedural and scientific process and information, dilatory  
3 appeals, and the improper application of laws and regulations by  
4 agencies that have in fact undermined the legislative purposes of those  
5 same laws while ignoring the long-term implications of delay and  
6 inaction. There is a compelling need for strong leadership,  
7 coordination, and reporting by a single state agency to respond  
8 appropriately to this urgent environmental challenge.

9 (6) Any further delay of control efforts will significantly  
10 increase the cost of spartina control and reduce the likelihood of  
11 long-term success. Control efforts must be coordinated across  
12 political and ownership boundaries in order to be effective.

13 (7) In destroying the biodiversity of tidelands and elevating  
14 tidelands, spartina places an undue financial burden upon private  
15 citizens, local governments, and taxing districts and has had a  
16 negative impact upon local economies dependent on a healthy estuarine  
17 ecosystem.

18 (8) The presence of noxious weeds on public lands constitutes a  
19 public nuisance and negatively impacts public and private lands. The  
20 legislature finds that control and eradication of noxious weeds on  
21 private lands is in the public interest.

22 NEW SECTION. **Sec. 2.** This state is facing an environmental  
23 disaster that will affect other states as well as other nations. The  
24 legislature finds that six years is sufficient time for state agencies  
25 to debate solutions to the spartina problem that is occurring in state  
26 waters. The purpose of this act is to focus agency action on control  
27 and future eradication of spartina. It is the mandate of the  
28 legislature that one state agency be responsible for a unified effort  
29 to eliminate spartina, with the advice of the state noxious weed  
30 control board, and that state agency shall be directly accountable to  
31 the legislature on the progress of the spartina eradication program.

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

34 The director shall approve water quality permits to federal, state,  
35 and local agencies, and licensed applicators for the purpose of  
36 utilizing surfactants and federally approved herbicides for aquatic  
37 noxious weed control subject only to compliance with federal labeling

1 requirements, the federal insecticide, fungicide, and rodenticide act,  
2 the noxious weed control board act, the Washington pesticide control  
3 act, the Washington pesticide application act, the state environmental  
4 policy act, and applicable environmental impact statements. The  
5 director shall not utilize this permit authority to otherwise condition  
6 or burden weed control efforts. The director's authority to issue  
7 water quality permits for activities other than the application of  
8 surfactants and approved herbicides, to control aquatic noxious weeds,  
9 is unaffected by this section.

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

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

16 (3) By June 30, 1997, the department of fish and wildlife shall  
17 develop a pamphlet for other aquatic noxious weed removal and control  
18 projects that will use, divert, obstruct, or change the natural flow or  
19 bed of any of the salt or fresh waters of the state. Following  
20 adoption of the pamphlet by rule, the pamphlet shall serve as a  
21 hydraulic project approval for aquatic noxious weed control for most  
22 control activities.

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

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

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

31 (1) Administration:

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

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

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

37 (d) "Person" means an individual, partnership, corporation,

1 association, organization, cooperative, public or municipal  
2 corporation, or agency of the state or local governmental unit however  
3 designated;

4 (e) "Hearing board" means the shoreline hearings board established  
5 by this chapter.

6 (2) Geographical:

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

9 (b) "Ordinary high water mark" on all lakes, streams, and tidal  
10 water is that mark that will be found by examining the bed and banks  
11 and ascertaining where the presence and action of waters are so common  
12 and usual, and so long continued in all ordinary years, as to mark upon  
13 the soil a character distinct from that of the abutting upland, in  
14 respect to vegetation as that condition exists on June 1, 1971, as it  
15 may naturally change thereafter, or as it may change thereafter in  
16 accordance with permits issued by a local government or the department:  
17 PROVIDED, That in any area where the ordinary high water mark cannot be  
18 found, the ordinary high water mark adjoining salt water shall be the  
19 line of mean higher high tide and the ordinary high water mark  
20 adjoining fresh water shall be the line of mean high water;

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

23 (d) "Shorelines" means all of the water areas of the state,  
24 including reservoirs, and their associated wetlands, together with the  
25 lands underlying them; except (i) shorelines of state-wide  
26 significance; (ii) shorelines on segments of streams upstream of a  
27 point where the mean annual flow is twenty cubic feet per second or  
28 less and the wetlands associated with such upstream segments; and (iii)  
29 shorelines on lakes less than twenty acres in size and wetlands  
30 associated with such small lakes;

31 (e) "Shorelines of state-wide significance" means the following  
32 shorelines of the state:

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

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

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

1 (B) Birch Bay--from Point Whitehorn to Birch Point,  
2 (C) Hood Canal--from Tala Point to Foulweather Bluff,  
3 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,  
4 and  
5 (E) Padilla Bay--from March Point to William Point;  
6 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and  
7 adjacent salt waters north to the Canadian line and lying seaward from  
8 the line of extreme low tide;  
9 (iv) Those lakes, whether natural, artificial, or a combination  
10 thereof, with a surface acreage of one thousand acres or more measured  
11 at the ordinary high water mark;  
12 (v) Those natural rivers or segments thereof as follows:  
13 (A) Any west of the crest of the Cascade range downstream of a  
14 point where the mean annual flow is measured at one thousand cubic feet  
15 per second or more,  
16 (B) Any east of the crest of the Cascade range downstream of a  
17 point where the annual flow is measured at two hundred cubic feet per  
18 second or more, or those portions of rivers east of the crest of the  
19 Cascade range downstream from the first three hundred square miles of  
20 drainage area, whichever is longer;  
21 (vi) Those wetlands associated with (i), (ii), (iv), and (v) of  
22 this subsection (2)(e);  
23 (f) "Wetlands" or "wetland areas" means those lands extending  
24 landward for two hundred feet in all directions as measured on a  
25 horizontal plane from the ordinary high water mark; floodways and  
26 contiguous floodplain areas landward two hundred feet from such  
27 floodways; and all marshes, bogs, swamps, and river deltas associated  
28 with the streams, lakes, and tidal waters which are subject to the  
29 provisions of this chapter; the same to be designated as to location by  
30 the department of ecology: PROVIDED, That any county or city may  
31 determine that portion of a one-hundred-year-flood plain to be included  
32 in its master program as long as such portion includes, as a minimum,  
33 the floodway and the adjacent land extending landward two hundred feet  
34 therefrom;  
35 (g) "Floodway" means those portions of the area of a river valley  
36 lying streamward from the outer limits of a watercourse upon which  
37 flood waters are carried during periods of flooding that occur with  
38 reasonable regularity, although not necessarily annually, said floodway  
39 being identified, under normal condition, by changes in surface soil

1 conditions or changes in types or quality of vegetative ground cover  
2 condition. The floodway shall not include those lands that can  
3 reasonably be expected to be protected from flood waters by flood  
4 control devices maintained by or maintained under license from the  
5 federal government, the state, or a political subdivision of the state.

6 (3) Procedural terms:

7 (a) "Guidelines" means those standards adopted to implement the  
8 policy of this chapter for regulation of use of the shorelines of the  
9 state prior to adoption of master programs. Such standards shall also  
10 provide criteria to local governments and the department in developing  
11 master programs;

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

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

19 (d) "Development" means a use consisting of the construction or  
20 exterior alteration of structures; dredging; drilling; dumping;  
21 filling; removal of any sand, gravel, or minerals; bulkheading; driving  
22 of piling; placing of obstructions; or any project of a permanent or  
23 temporary nature which interferes with the normal public use of the  
24 surface of the waters overlying lands subject to this chapter at any  
25 state of water level;

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

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

34 (ii) Construction of the normal protective bulkhead common to  
35 single family residences;

36 (iii) Emergency construction necessary to protect property from  
37 damage by the elements;

38 (iv) Construction and practices normal or necessary for farming,  
39 irrigation, and ranching activities, including agricultural service

1 roads and utilities on wetlands, and the construction and maintenance  
2 of irrigation structures including but not limited to head gates,  
3 pumping facilities, and irrigation channels: PROVIDED, That a feedlot  
4 of any size, all processing plants, other activities of a commercial  
5 nature, alteration of the contour of the wetlands by leveling or  
6 filling other than that which results from normal cultivation, shall  
7 not be considered normal or necessary farming or ranching activities.  
8 A feedlot shall be an enclosure or facility used or capable of being  
9 used for feeding livestock hay, grain, silage, or other livestock feed,  
10 but shall not include land for growing crops or vegetation for  
11 livestock feeding and/or grazing, nor shall it include normal livestock  
12 wintering operations;

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

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

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

26 (viii) Operation, maintenance, or construction of canals,  
27 waterways, drains, reservoirs, or other facilities that now exist or  
28 are hereafter created or developed as a part of an irrigation system  
29 for the primary purpose of making use of system waters, including  
30 return flow and artificially stored ground water for the irrigation of  
31 lands;

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

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

39 (xi) Any action commenced prior to December 31, 1982, pertaining to

1 (A) the restoration of interim transportation services as may be  
2 necessary as a consequence of the destruction of the Hood Canal bridge,  
3 including, but not limited to, improvements to highways, development of  
4 park and ride facilities, and development of ferry terminal facilities  
5 until a new or reconstructed Hood Canal bridge is open to traffic; and  
6 (B) the reconstruction of a permanent bridge at the site of the  
7 original Hood Canal bridge;

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

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

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

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

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

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

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

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

30 (3) "Person" means any individual, partnership, corporation, firm,  
31 the state or any department, agency, or subdivision thereof, or any  
32 other entity.

33 (4) "Owner" means the person in actual control of property, or his  
34 agent, whether such control is based on legal or equitable title or on  
35 any other interest entitling the holder to possession and, for purposes  
36 of liability, pursuant to RCW 17.10.170 or 17.10.210, means the  
37 possessor of legal or equitable title or the possessor of an easement:  
38 PROVIDED, That when the possessor of an easement has the right to

1 control or limit the growth of vegetation within the boundaries of an  
2 easement, only the possessor of such easement shall be deemed, for the  
3 purpose of this chapter, an "owner" of the property within the  
4 boundaries of such easement.

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

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

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

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

16 (9) "Weed district" means a weed district as defined in chapters  
17 17.04 and 17.06 RCW.

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

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

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

26 Wherever the words "waters of the state" shall be used in this  
27 chapter, they shall be construed to include lakes, rivers, ponds,  
28 streams, inland waters, underground waters, salt waters and all other  
29 surface waters and watercourses within the jurisdiction of the state of  
30 Washington.

31 Whenever the word "pollution" is used in this chapter, it shall be  
32 construed to mean such contamination, or other alteration of the  
33 physical, chemical or biological properties, of any waters of the  
34 state, including change in temperature, taste, color, turbidity, or  
35 odor of the waters, or such discharge of any liquid, gaseous, solid,  
36 radioactive, or other substance into any waters of the state as will or  
37 is likely to create a nuisance or render such waters harmful,  
38 detrimental or injurious to the public health, safety or welfare, or to

1 domestic, commercial, industrial, agricultural, recreational, or other  
2 legitimate beneficial uses, or to livestock, wild animals, birds, fish  
3 or other aquatic life.

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

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

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

11       NEW SECTION. Sec. 8. State agencies and local governments may not  
12 use any other local, state, or federal permitting requirement,  
13 regulatory authority, or legal mechanism to override the legislative  
14 intent and statutory mandates of this act.

15       NEW SECTION. Sec. 9. Spartina removal shall include restoration  
16 to return intertidal land and other infested lands to the condition  
17 found on adjacent unaffected lands in the same tidal elevation. The  
18 department of fish and wildlife, the department of ecology, the  
19 department of agriculture, and the department of natural resources  
20 shall develop a restoration plan in cooperation with owners of spartina  
21 infested lands and shall submit the plan to the legislature by December  
22 31, 1995.

23       NEW SECTION. Sec. 10. (1) The state department of agriculture is  
24 the lead agency for the control of spartina with the advice of the  
25 state noxious weed control board.

26       (2) Responsibilities of the lead agency include:

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

30       (b) Preparation of a state-wide spartina management plan utilizing  
31 integrated vegetation management strategies that encompass all of  
32 Washington's tidelands. The plan shall be developed in cooperation  
33 with local, state, federal, and tribal governments, private landowners,  
34 and concerned citizens. The plan shall prioritize areas for control,  
35 including directing on the ground control efforts that include, but are  
36 not limited to: (i) Control work and contracts; (ii) spartina survey;

1 (iii) collection and maintenance of spartina location data; (iv)  
2 purchasing equipment, goods, and services; (v) survey of threatened and  
3 endangered species; and (vi) site-specific environmental information  
4 and documents; and

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

6 The lead agency shall report no later than May 15th and December  
7 15th of each year on the progress of the program, the number of acres  
8 treated by various methods of control, and on the funds spent.

9 NEW SECTION. **Sec. 11.** The department of agriculture shall work in  
10 close conjunction with the state weed board. The department of  
11 agriculture may grant funds to other state agencies, local governments,  
12 and nonprofit corporations for eradication purposes and may use those  
13 moneys itself. The department of agriculture may match private funds  
14 for eradication programs on private property on a fifty-fifty matching  
15 basis. The accounting and supervision of the funds at the local level  
16 shall be conducted by the department of agriculture.

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

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

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

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

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

30 NEW SECTION. **Sec. 17.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other

1 persons or circumstances is not affected.

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

6 **2SSB 5633** - S AMD

7 By Senators Snyder, Fraser and Morton

8 ADOPTED 3/10/95

9 On page 1, line 1 of the title, after "control;" strike the  
10 remainder of the title and insert "amending RCW 90.58.030, 17.10.010,  
11 and 90.48.020; adding a new section to chapter 90.48 RCW; adding a new  
12 chapter to Title 17 RCW; and declaring an emergency."

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