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**SUBSTITUTE SENATE BILL 5190**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** Senate Committee on Environmental Quality & Water Resources  
(originally sponsored by Senators Swecker, Fraser, Rasmussen,  
T. Sheldon and Winsley)

Read first time 02/15/1999.

1 AN ACT Relating to lakes management; amending RCW 85.38.010,  
2 36.61.020, 36.61.270, 75.20.100, 90.48.445, and 17.24.051; adding new  
3 chapters to Title 90 RCW; creating a new section; and repealing RCW  
4 36.61.115.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the  
7 environmental, recreational, and aesthetic values of many of the  
8 state's lakes are threatened by eutrophication and other deterioration  
9 and that existing governmental authorities are unable to improve and  
10 maintain the quality of the state's lakes adequately. It is the  
11 purpose of this chapter to allow the creation of a new type of special  
12 district authorized to embark on a program of lake improvement and  
13 maintenance for the general public's benefit, health, and welfare.

14 NEW SECTION. **Sec. 2.** (1) Lake management service areas may be  
15 created and provide lake management services and facilities, including  
16 facilities and services to: (a) Maintain and restore lakes; (b)  
17 enhance water quality; (c) control and maintain water levels; (d)  
18 provide fish ladders and other devices to conserve fish and game fish;

1 (e) divert and treat storm water before its disposal in a lake; (f)  
2 control agricultural wastes; (g) study lake water quality problems and  
3 solutions; (h) clean and maintain ditches and streams entering or  
4 leaving a lake; and (i) provide drainage control, storm water control,  
5 and surface water control improvements and activities. A lake  
6 management service area may take the necessary administrative,  
7 engineering, legal, and operational actions associated with its  
8 substantive authorities. No lake management service area activities  
9 shall adversely affect any existing property or water rights.

10 (2) A lake management service area is a quasi-municipal corporation  
11 possessing the normal authorities of a quasi-municipal corporation  
12 including, but not limited to, the authority to: (a) Acquire,  
13 purchase, or lease, in its own name, necessary property, property  
14 rights, facilities, and equipment; (b) sell or exchange surplus  
15 property, property rights, facilities, and equipment; (c) accept funds  
16 and property by loan, grant, gift, or otherwise from the United States,  
17 the state of Washington, or any other public or private source; (d)  
18 hire staff, employees, or services, or use voluntary labor; (e) sue and  
19 be sued; (f) enter into contracts, including interlocal contracts and  
20 agreements under chapter 39.34 RCW; and (g) cooperate with or join the  
21 United States, the state of Washington, or any other public or private  
22 entity or person for municipality purposes.

23 NEW SECTION. **Sec. 3.** A lake management service area shall be  
24 governed by a three-member governing body, the members of which are  
25 elected to three-year staggered terms of office. The provisions of  
26 chapter 85.38 RCW relating to the appointing of the initial members of  
27 the governing body of a special district, subsequent election of  
28 members of the governing body of a special district, and filling of a  
29 vacancy, apply to the governing body of a lake management service area.

30 NEW SECTION. **Sec. 4.** Elections and franchise rights in a lake  
31 management service area shall conform with the provisions of chapter  
32 85.38 RCW relating to the elections and franchise rights in a special  
33 district, except that a property owner shall not receive added votes  
34 based upon the extent of his or her ownership of land within the  
35 service area and the ownership of lake bottom property within the lake  
36 management service area shall not grant franchise rights.

1        NEW SECTION.    **Sec. 5.**    The provisions of chapter 85.38 RCW relating  
2 to the following matters in special districts apply to lake management  
3 service areas:

4            (1) The procedure to create a special district;

5            (2) The filing of bonds by members of the governing body;

6            (3) The adoption of a budget, imposition of special assessments,  
7 and imposition of rates and charges by a special district that was  
8 created after July 28, 1985, except that liens for special assessments  
9 and liens for rates and charges shall not extend to public property and  
10 special assessments or rates and charges shall not be imposed on lake  
11 bottom property;

12           (4) Issuing special assessment bonds, refunding special assessment  
13 bonds, and creating a special assessment bond guaranty fund;

14           (5) Limitations on constructing improvements by employees of the  
15 special district; and

16           (6) Annexing contiguous territory, consolidating contiguous special  
17 districts, withdrawing areas from a special district that are located  
18 in a city or town, transferring territory from one special district to  
19 another special district, suspending the operations of a special  
20 district, and reactivating a special district that had its operations  
21 suspended.

22        **Sec. 6.**    RCW 85.38.010 and 1991 c 349 s 1 are each amended to read  
23 as follows:

24        Unless the context clearly requires otherwise, the definitions in  
25 this section apply throughout this chapter:

26           (1) "Governing body" means the board of commissioners, board of  
27 supervisors, or board of directors of a special district.

28           (2) "Owner of land" means the record owner of at least a majority  
29 ownership interest in a separate and legally created lot or parcel of  
30 land, as determined by the records of the county auditor, except that  
31 if the lot or parcel has been sold under a real estate contract, the  
32 vendee or grantee shall be deemed to be the owner of such land for  
33 purposes of authorizing voting rights. It is assumed, unless shown  
34 otherwise, that the name appearing as the owner of property on the  
35 property tax rolls is the current owner.

36           (3) "Qualified voter of a special district" means a person who is  
37 either:    (a) A natural person who is a voter under general state  
38 election laws, registered to vote in the state of Washington for a

1 period of not less than thirty days before the election, and the owner  
2 of land located in the special district for a period of not less than  
3 thirty days before the election; (b) a corporation or partnership that  
4 has owned land located in the special district for a period of not less  
5 than sixty days before the election; or (c) the state, its agencies or  
6 political subdivisions that own land in the special district or lands  
7 proposed to be annexed into the special district except that the state,  
8 its agencies and political subdivisions shall not be eligible to vote  
9 to elect a member of the governing board of a special district.

10 (4) "Special district" means: (a) A diking district; (b) a  
11 drainage district; (c) a diking, drainage, and/or sewerage improvement  
12 district; (d) an intercounty diking and drainage district; (e) a  
13 consolidated diking district, drainage district, diking improvement  
14 district, and/or drainage improvement district; ~~((or))~~ (f) a flood  
15 control district; or (g) a lake management service area.

16 (5) "Special district general election" means the election of a  
17 special district regularly held on the first Tuesday after the first  
18 Monday in February in each even-numbered year at which a member of the  
19 special district governing body is regularly elected.

20 **Sec. 7.** RCW 36.61.020 and 1987 c 432 s 2 are each amended to read  
21 as follows:

22 Any county may create lake management districts to finance the  
23 improvement and maintenance of lakes located within or partially within  
24 the boundaries of the county. All or a portion of a lake and the  
25 adjacent land areas may be included within one or more lake management  
26 districts. More than one lake, or portions of lakes, and the adjacent  
27 land areas may be included in a single lake management district. ~~((A  
28 lake management district may be created for a period of up to ten  
29 years.))~~

30 Special assessments or rates and charges may be imposed on the  
31 property included within a lake management district to finance lake  
32 improvement and maintenance activities, including: (1) The control or  
33 removal of aquatic plants and vegetation; (2) water quality; (3) the  
34 control of water levels; (4) storm water diversion and treatment; (5)  
35 agricultural waste control; (6) studying lake water quality problems  
36 and solutions; (7) cleaning and maintaining ditches and streams  
37 entering or leaving the lake; and (8) the related administrative,

1 engineering, legal, and operational costs, including the costs of  
2 creating the lake management district.

3 Special assessments or rates and charges may be imposed annually on  
4 all the land in a lake management district for the duration of the lake  
5 management district without a related issuance of lake management  
6 district bonds or revenue bonds. Special assessments also may be  
7 imposed in the manner of special assessments in a local improvement  
8 district with each landowner being given the choice of paying the  
9 entire special assessment in one payment, or to paying installments,  
10 with lake management district bonds being issued to obtain moneys not  
11 derived by the initial full payment of the special assessments, and the  
12 installments covering all of the costs related to issuing, selling, and  
13 redeeming the lake management district bonds.

14 **Sec. 8.** RCW 36.61.270 and 1987 c 432 s 11 are each amended to read  
15 as follows:

16 Whenever rates and charges are to be imposed in a lake management  
17 district or whenever a previously approved schedule of rates and  
18 charges is to be adjusted, the county legislative authority shall  
19 prepare a roll of rates and charges that includes those matters  
20 required to be included in a special assessment roll and shall hold a  
21 public hearing on the proposed roll of rates and charges as provided  
22 under RCW 36.61.120 through 36.61.150 for a special assessment roll.  
23 The county legislative authority shall have full jurisdiction and  
24 authority to fix, alter, regulate, and control the rates and charges  
25 imposed by a lake management district and may classify the rates or  
26 charges by any reasonable factor or factors, including benefit, use,  
27 front footage, acreage, the extent of improvements on the property, the  
28 type of improvements on the property, uses to which the property is  
29 put, service to be provided, and any other reasonable factor or  
30 factors. The flexibility to establish rates and charges includes the  
31 authority to reduce rates and charges on property owned by low-income  
32 persons.

33 Except as provided in this section, the collection of rates and  
34 charges, lien status of unpaid rates and charges, and method of  
35 foreclosing on such liens shall be subject to the provisions of chapter  
36 36.94 RCW. Public property, including state property, shall be subject  
37 to the rates and charges to the same extent that private property is  
38 subject to them, except that liens may not be foreclosed on the public

1 property, and the procedure for imposing such rates and charges on  
2 state property shall conform with the procedure provided for in chapter  
3 79.44 RCW concerning the imposition of special assessments upon state  
4 property. The total amount of rates and charges cannot exceed the cost  
5 of lake improvement or maintenance activities proposed to be financed  
6 by such rates and charges, as specified in the resolution of intention.  
7 Revenue bonds exclusively payable from the rates and charges may be  
8 issued by the county under chapter 39.46 RCW.

9 NEW SECTION. **Sec. 9.** RCW 36.61.115 (Limitation on special  
10 assessments, rates and charges) and 1987 c 432 s 9 are each repealed.

11 NEW SECTION. **Sec. 10.** The legislature finds that it is in the  
12 best interest of the people of the state to provide a predictable  
13 approach to control of aquatic plants that is protective of both human  
14 health and the environment. The legislature intends, through an  
15 aquatic plant management permit program, to create a coordinated,  
16 timely, and predictable permit process that will assist property owners  
17 and local governments in controlling aquatic plants.

18 NEW SECTION. **Sec. 11.** The definitions in this section apply  
19 throughout this chapter, unless the context requires otherwise.

20 (1) "Aquatic plant" includes any noxious weed on the state noxious  
21 weed list adopted under RCW 17.10.080; any other nuisance or beneficial  
22 aquatic plants not on the state noxious weed list; and any algae or  
23 cyanobacteria.

24 (2) "Aquatic plant management" means controlling, eradicating, or  
25 removing aquatic plants through chemical, biological, or mechanical  
26 means.

27 (3) "Aquatic plant management plan" means any plan that reviews  
28 alternative aquatic plant management methods according to the  
29 principles of integrated pest management, as defined in RCW  
30 17.15.010(1), determines feasible, effective solutions to be  
31 implemented, and provides for the monitoring and evaluation of the  
32 plan's effectiveness.

33 (4) "Department" means the department of ecology.

34 (5) "Person" means an individual or a public or private entity or  
35 organization and includes local, state, and federal government

1 agencies, and all business organizations including corporations and  
2 partnerships.

3 NEW SECTION. **Sec. 12.** No person may control, eradicate, remove,  
4 or otherwise alter any aquatic plants in waters of the state unless an  
5 aquatic plant management permit for such activity has been issued by  
6 the department, or unless: (1) The removal is incidental or  
7 unintentional, (2) the activity removes noxious weeds with hand tools,  
8 or (3) the activity is in waters expressly exempted by this chapter or  
9 by rule. Application for an aquatic plant management permit to engage  
10 in aquatic plant management activities shall be made to the department.

11 NEW SECTION. **Sec. 13.** (1) The department and the department of  
12 agriculture shall jointly develop rules to implement the aquatic plant  
13 management permit program, in consultation with the department of  
14 natural resources, the department of health, the department of fish and  
15 wildlife, and the state noxious weed board. The rules shall be adopted  
16 by the department. The rules shall be oriented towards developing  
17 solutions to noxious and nuisance aquatic plant problems, shall provide  
18 first for the protection of human health, and second for the protection  
19 of wildlife and the environment, and shall provide for measurable  
20 results. The rules shall include criteria developed by the department  
21 of fish and wildlife under chapter 75.20 RCW for the protection of  
22 fish. The rules shall also be based on the principles of integrated  
23 pest management as defined in RCW 17.15.010(1) and shall define a  
24 tiered approach to aquatic plant management, including the tiers  
25 described in section 14 of this act. The rules shall include, at a  
26 minimum, the following elements:

- 27 (a) The submittal requirements for a permit application;  
28 (b) Criteria for issuing, modifying, or denying permit  
29 applications;  
30 (c) Operating and threshold requirements for chemical, biological,  
31 and mechanical controls based on the risk assessment in subsection (2)  
32 of this section;  
33 (d) An administrative appeals process;  
34 (e) An opportunity for public comment on permit applications;  
35 (f) Penalties and remedies for noncompliance by an applicant or the  
36 department;

1 (g) Maximum timelines for permit issuance, not to exceed sixty days  
2 from the time a complete application is received;

3 (h) A method to update the rules periodically as new information or  
4 products are developed; and

5 (i) Criteria and forms for state environmental policy act review  
6 under chapter 43.21C RCW, appropriate to an aquatic environment, to  
7 expedite issuance of individual permits.

8 (2) The department and the department of agriculture shall contract  
9 for a risk assessment of alternative aquatic plant management methods.  
10 Consultants may be nominated by national scientific organizations or by  
11 the public. Review of chemical control methods shall focus on issues  
12 specific to Washington state that are not addressed through federal  
13 pesticide registration and labeling. Information in the risk  
14 assessment shall be reviewed by experts in the fields of aquatic plant  
15 management and water quality, and shall be used to develop the  
16 operating and threshold requirements referenced in subsection (1)(c) of  
17 this section.

18 (3) Environmental review of the proposed rules conducted according  
19 to chapter 43.21C RCW shall incorporate and update all existing state  
20 environmental policy act documents related to aquatic plant management.

21 NEW SECTION. **Sec. 14.** (1) The aquatic plant management permit  
22 program shall include a tiered approach to aquatic plant management.  
23 At a minimum, the permit program shall include the following tiers:

24 (a) An expedited permit may be approved for aquatic plant  
25 management activities on lakes less than five acres where the following  
26 criteria are met: (i) There is no outlet; (ii) there are no salmonid  
27 fish in the lake; (iii) there is no drinking water use of the lake;  
28 (iv) there is no swimming; and (v) the lake is in single ownership or  
29 all owners support the exemption. Applicants for an expedited permit  
30 under this subsection shall submit a notification that establishes  
31 compliance with these criteria and describes measures to ensure  
32 compliance with the limitations on drinking water and swimming use  
33 during the management activities. The department shall review the  
34 notification compliance with the criteria, and may deny the permit only  
35 for inapplicability of the criteria or inadequate measure to enforce  
36 the limitations of the criteria. If the department does not make a  
37 decision on the permit within thirty days of receiving the  
38 notification, the permit is deemed approved. In such lakes, any state-



1 registered aquatic pesticide may be used. Use of the pesticide shall  
2 be conducted in a manner to protect human health and safety, and to  
3 prevent injury to nontargeted plant and animal life.

4 (b) The operating and threshold requirements of the aquatic plant  
5 management permit established in section 13(1)(c) of this act shall  
6 provide procedures and criteria by which information developed through  
7 site-specific review in completing the lake management or aquatic  
8 vegetation management plan may be used to formulate specific permit  
9 provisions. State environmental policy act review under chapter 43.21C  
10 RCW must be completed for any aquatic plant management plan. Waters  
11 with adopted aquatic plant management plans may be issued a multiyear  
12 aquatic plant management permit.

13 (c) Pilot use of state-registered aquatic pesticides that does not  
14 meet the operating requirements in section 13(1)(c) of this act may be  
15 permitted to develop solutions to noxious and nuisance conditions  
16 affecting the public health, to address early infestation of noxious  
17 weeds, and for the purpose of data collection and research to assist  
18 the department with the review and revision of the operating  
19 requirements of the aquatic plant management permit program.

20 (d) General permits may be issued on a regional or state-wide basis  
21 to control noxious aquatic weeds. Any person may apply for coverage  
22 under the general permit.

23 (2) The department and the department of agriculture may expand  
24 these tiers to address other circumstances or waters.

25 NEW SECTION. **Sec. 15.** The rules developed by the department and  
26 the department of agriculture to implement the aquatic plant management  
27 permit program shall include the requirements of other aquatic plant  
28 management permitting programs, including the water quality permit  
29 required by RCW 90.48.445, the hydraulic project approval required by  
30 RCW 75.20.100 and 75.20.108, and the special permit for biological  
31 control required by RCW 17.24.051. Issuance of an aquatic plant  
32 management permit satisfies the requirements of RCW 90.48.445,  
33 75.20.100, and 17.24.051. If an application for an aquatic plant  
34 management permit includes biological control methods, the department  
35 shall defer to the department of agriculture and the requirements of  
36 RCW 17.24.051. If an application for an aquatic plant management  
37 permit includes mechanical control methods, the department shall defer  
38 to the department of fish and wildlife and the requirements of RCW

1 75.20.100 and 75.20.108. The permit requirements for mechanical  
2 control of aquatic plants shall be satisfied by the applicant if the  
3 applicant fulfills the applicable provisions in the "Aquatic Plants and  
4 Fish" pamphlet issued by the department of fish and wildlife under RCW  
5 75.20.108.

6 **Sec. 16.** RCW 75.20.100 and 1998 c 190 s 87 are each amended to  
7 read as follows:

8 (1) In the event that any person or government agency desires to  
9 construct any form of hydraulic project or perform other work that will  
10 use, divert, obstruct, or change the natural flow or bed of any of the  
11 salt or fresh waters of the state, such person or government agency  
12 shall, before commencing construction or work thereon and to ensure the  
13 proper protection of fish life, secure the approval of the department  
14 as to the adequacy of the means proposed for the protection of fish  
15 life. This approval shall not be unreasonably withheld.

16 (2)(a) Except as provided in RCW 75.20.1001, the department shall  
17 grant or deny approval of a standard permit within forty-five calendar  
18 days of the receipt of a complete application and notice of compliance  
19 with any applicable requirements of the state environmental policy act,  
20 made in the manner prescribed in this section.

21 (b) The applicant may document receipt of application by filing in  
22 person or by registered mail. A complete application for approval  
23 shall contain general plans for the overall project, complete plans and  
24 specifications of the proposed construction or work within the mean  
25 higher high water line in salt water or within the ordinary high water  
26 line in fresh water, and complete plans and specifications for the  
27 proper protection of fish life.

28 (c) The forty-five day requirement shall be suspended if:

29 (i) After ten working days of receipt of the application, the  
30 applicant remains unavailable or unable to arrange for a timely field  
31 evaluation of the proposed project;

32 (ii) The site is physically inaccessible for inspection; or

33 (iii) The applicant requests delay. Immediately upon determination  
34 that the forty-five day period is suspended, the department shall  
35 notify the applicant in writing of the reasons for the delay.

36 (d) For purposes of this section, "standard permit" means a written  
37 permit issued by the department when the conditions under subsections  
38 (3) and (5)(b) of this section are not met.

1 (3)(a) The department may issue an expedited written permit in  
2 those instances where normal permit processing would result in  
3 significant hardship for the applicant or unacceptable damage to the  
4 environment. In cases of imminent danger, the department shall issue  
5 an expedited written permit, upon request, for work to repair existing  
6 structures, move obstructions, restore banks, protect property, or  
7 protect fish resources. Expedited permit requests require a complete  
8 written application as provided in subsection (2)(b) of this section  
9 and shall be issued within fifteen calendar days of the receipt of a  
10 complete written application. Approval of an expedited permit is valid  
11 for up to sixty days from the date of issuance.

12 (b) For the purposes of this subsection, "imminent danger" means a  
13 threat by weather, water flow, or other natural conditions that is  
14 likely to occur within sixty days of a request for a permit  
15 application.

16 (c) The department may not require the provisions of the state  
17 environmental policy act, chapter 43.21C RCW, to be met as a condition  
18 of issuing a permit under this subsection.

19 (d) The department or the county legislative authority may  
20 determine if an imminent danger exists. The county legislative  
21 authority shall notify the department, in writing, if it determines  
22 that an imminent danger exists.

23 (4) Approval of a standard permit is valid for a period of up to  
24 five years from date of issuance. The permittee must demonstrate  
25 substantial progress on construction of that portion of the project  
26 relating to the approval within two years of the date of issuance. If  
27 the department denies approval, the department shall provide the  
28 applicant, in writing, a statement of the specific reasons why and how  
29 the proposed project would adversely affect fish life. Protection of  
30 fish life shall be the only ground upon which approval may be denied or  
31 conditioned. Chapter 34.05 RCW applies to any denial of project  
32 approval, conditional approval, or requirements for project  
33 modification upon which approval may be contingent.

34 (5)(a) In case of an emergency arising from weather or stream flow  
35 conditions or other natural conditions, the department, through its  
36 authorized representatives, shall issue immediately, upon request, oral  
37 approval for removing any obstructions, repairing existing structures,  
38 restoring stream banks, or to protect property threatened by the stream  
39 or a change in the stream flow without the necessity of obtaining a

1 written approval prior to commencing work. Conditions of an oral  
2 approval to protect fish life shall be established by the department  
3 and reduced to writing within thirty days and complied with as provided  
4 for in this section. Oral approval shall be granted immediately, upon  
5 request, for a stream crossing during an emergency situation.

6 (b) For purposes of this section and RCW 75.20.103, "emergency"  
7 means an immediate threat to life, the public, property, or of  
8 environmental degradation.

9 (c) The department or the county legislative authority may declare  
10 and continue an emergency when one or more of the criteria under (b) of  
11 this subsection are met. The county legislative authority shall  
12 immediately notify the department if it declares an emergency under  
13 this subsection.

14 (6) The department shall, at the request of a county, develop five-  
15 year maintenance approval agreements, consistent with comprehensive  
16 flood control management plans adopted under the authority of RCW  
17 86.12.200, or other watershed plan approved by a county legislative  
18 authority, to allow for work on public and private property for bank  
19 stabilization, bridge repair, removal of sand bars and debris, channel  
20 maintenance, and other flood damage repair and reduction activity under  
21 agreed-upon conditions and times without obtaining permits for specific  
22 projects.

23 (7) This section shall not apply to the construction of any form of  
24 hydraulic project or other work which diverts water for agricultural  
25 irrigation or stock watering purposes authorized under or recognized as  
26 being valid by the state's water codes, or when such hydraulic project  
27 or other work is associated with streambank stabilization to protect  
28 farm and agricultural land as defined in RCW 84.34.020. These  
29 irrigation or stock watering diversion and streambank stabilization  
30 projects shall be governed by RCW 75.20.103.

31 A landscape management plan approved by the department and the  
32 department of natural resources under RCW 76.09.350(2), shall serve as  
33 a hydraulic project approval for the life of the plan if fish are  
34 selected as one of the public resources for coverage under such a plan.

35 (8) A permit issued under section 12 of this act satisfies the  
36 requirements under this section.

37 (9) For the purposes of this section and RCW 75.20.103, "bed" means  
38 the land below the ordinary high water lines of state waters. This  
39 definition does not include irrigation ditches, canals, storm water

1 run-off devices, or other artificial watercourses except where they  
2 exist in a natural watercourse that has been altered by man.

3 ~~((+9))~~ (10) The phrase "to construct any form of hydraulic project  
4 or perform other work" does not include the act of driving across an  
5 established ford. Driving across streams or on wetted stream beds at  
6 areas other than established fords requires approval. Work within the  
7 ordinary high water line of state waters to construct or repair a ford  
8 or crossing requires approval.

9 **Sec. 17.** RCW 90.48.445 and 1995 c 255 s 3 are each amended to read  
10 as follows:

11 (1) The director shall issue or approve water quality permits for  
12 use by federal, state, or local governmental agencies and licensed  
13 applicators for the purpose of using, for aquatic ~~((noxious weed))~~ pest  
14 control, ~~((herbicides and surfactants))~~ pesticides and adjuvants  
15 registered under state or federal pesticide control laws. The issuance  
16 of the permits shall be subject only to compliance with: Federal and  
17 state pesticide label requirements, the requirements of the federal  
18 insecticide, fungicide, and rodenticide act, the Washington pesticide  
19 control act, the Washington pesticide application act, and the state  
20 environmental policy act; and applicable requirements established in an  
21 option or options recommended for controlling the ~~((noxious))~~ aquatic  
22 weed by a final environmental impact statement published under chapter  
23 43.21C RCW by the department prior to May 5, 1995, by the department of  
24 agriculture, or by the department of agriculture jointly with other  
25 state agencies. This section may not be construed as requiring the  
26 preparation of a new environmental impact statement to replace a final  
27 environmental impact statement published before May 5, 1995.

28 (2) The director of ecology may not utilize this permit authority  
29 to otherwise condition or burden ~~((weed))~~ pest control efforts. The  
30 director's authority to issue water quality modification permits for  
31 activities other than the application of ~~((surfactants))~~ adjuvants and  
32 approved ~~((herbicides))~~ pesticides, to control aquatic ~~((noxious~~  
33 ~~weeds))~~ pests, is unaffected by this section.

34 (3) ~~((As used in this section, "aquatic noxious weed" means an~~  
35 ~~aquatic weed on the state noxious weed list adopted under RCW~~  
36 ~~17.10.080.))~~ A permit issued under section 12 of this act satisfies the  
37 permit requirements under this section.

1       **Sec. 18.** RCW 17.24.051 and 1991 c 257 s 9 are each amended to read  
2 as follows:

3       The introduction into or release within the state of a plant pest,  
4 noxious weeds, bee pest, or any other organism that may directly or  
5 indirectly affect the plant life of the state as an injurious pest,  
6 parasite, predator, or other organism is prohibited, except under  
7 special permit issued by the department under rules adopted by the  
8 director. A special permit is not required if a permit has been issued  
9 under section 12 of this act. A special permit is not required for the  
10 introduction or release within the state of a genetically engineered  
11 plant or plant pest organism if the introduction or release has been  
12 approved under provisions of federal law and the department has been  
13 notified of the planned introduction or release. The department shall  
14 be the sole issuing agency for the permits. Except for research  
15 projects approved by the department, no permit for a biological control  
16 agent shall be issued unless the department has determined that the  
17 parasite, predator, or plant pathogen is target organism or plant  
18 specific and not likely to become a pest of nontarget plants or other  
19 beneficial organisms. The director may also exclude biological control  
20 agents that are infested with parasites determined to be detrimental to  
21 the biological control efforts of the state. The department may rely  
22 upon findings of the United States department of agriculture or any  
23 experts that the director may deem appropriate in making a  
24 determination about the threat posed by such organisms. In addition,  
25 the director may request confidential business information subject to  
26 the conditions in RCW 17.24.061.

27       Plant pests, noxious weeds, or other organisms introduced into or  
28 released within this state in violation of this section shall be  
29 subject to detention and disposition as otherwise provided in this  
30 chapter.

31       NEW SECTION. **Sec. 19.** Sections 1 through 5 of this act constitute  
32 a new chapter in Title 90 RCW.

33       NEW SECTION. **Sec. 20.** Sections 10 through 15 of this act  
34 constitute a new chapter in Title 90 RCW.

35       NEW SECTION. **Sec. 21.** If any provision of this act or its  
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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