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## Environment & Energy Committee

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### HB 1611

**Brief Description:** Ensuring the safe and productive cultivation of shellfish.

**Sponsors:** Representatives Blake, Walsh, Springer, Kretz, Dye and Chapman.

#### Brief Summary of Bill

- Directs the Department of Ecology (Ecology), by May 15, 2019, to authorize the use of imidacloprid to control infestations of burrowing shrimp in Willapa Bay and Grays Harbor for the 2019 treatment season.
- Directs Ecology, by April 15, 2020, to issue a national Pollutant Discharge Elimination System permit for the use of pesticides to control infestations of burrowing shrimp in association with the cultivation of shellfish.
- Transfers the authority of Ecology, with regard to the regulation of pesticides used to control burrowing shrimp in Willapa Bay and Grays Harbor, to the Department of Agriculture (WSDA), effective July 1, 2020.
- Appropriates \$500,000 from the State General Fund to Ecology for the purpose of conducting a study on the use of imidacloprid for the control of burrowing shrimp in Willapa Bay and Grays Harbor.
- Appropriates \$1,000,000 from the State Toxics Account to the WSDA for the purposes of studying the impacts of the use of imidacloprid as a means to control burrowing shrimp, and to continue efforts to employ an accepted integrated pest management approach to burrowing shrimp in Willapa Bay and Grays Harbor.

**Hearing Date:** 2/19/19

**Staff:** Robert Hatfield (786-7117).

#### **Background:**

[Water Pollution Regulation in Washington State under Federal and State Laws.](#)

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*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.*

The federal Clean Water Act establishes the National Pollutant Discharge Elimination System (NPDES), which regulates discharges of pollutants to surface waters. In Washington, NPDES permitting authority is delegated to the state, allowing the Department of Ecology (Ecology) to issue NPDES permits. In addition to delegated NPDES permitting authority, state law provides Ecology with parallel authority to regulate discharges to state waters, which includes a more expansive scope of waters than are covered under the federal Clean Water Act, including groundwater.

#### Federal Insecticide, Fungicide, and Rodenticide Act.

The registration and use of pesticides is regulated at the national level by the Federal Insecticide, Fungicide, and Rodenticide Act. In general, a pesticide cannot be sold or distributed within the United States unless it has been registered with the U.S. Environmental Protection Agency.

#### State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. Government decisions that the SEPA checklist process identifies as having significant adverse environmental impacts must then undergo a more comprehensive environmental analysis in the form of an Environmental Impact Statement.

#### **Summary of Bill:**

By May 15, 2019, the Department of Ecology (Ecology) must authorize the use of imidacloprid to control infestations of burrowing shrimp in Willapa Bay and Grays Harbor for the 2019 treatment season. The authorization must be issued to any entity that applied for, or was part of any group that applied for, a National Pollution Discharge Elimination System (NPDES) permit as of January 2016. The authorization must be limited to an aggregate maximum of one thousand acres of imidacloprid application during the 2019 treatment season.

By April 15, 2020, Ecology must issue an NPDES permit for the use of pesticides to control infestations of burrowing shrimp in association with the cultivation of shellfish. With the exception of the requirements described below, Ecology may not impose limitations, standards, or monitoring requirements in connection with such a permit that are any more stringent than those contained in the federal registration for any pesticide subject to the permit.

The NPDES permit is subject to the following requirements:

- the permit must limit the total treated acreage under the permit to an aggregate maximum of one thousand acres per year; and
- the permit must prohibit the use of helicopters to apply pesticides under the permit.

Effective July 1, 2020, with regard to the regulation of pesticides used to control burrowing shrimp in Willapa Bay and Grays Harbor, Ecology must delegate its authority to under the State Water Pollution Control Act and the federal Clean Water Act to the Department of Agriculture (WSDA). Until such a delegation of authority receives federal approval, the WSDA's exercise of its regulatory authority regarding the application of pesticides used to control burrowing shrimp

on tidelands in Willapa Bay and Grays Harbor must be accomplished after reaching agreement with the director of Ecology.

Provisions are included to direct the transfer of Ecology's records, equipment, funds, and assets related to regulation of pesticides to control burrowing shrimp in Willapa Bay and Grays Harbor to the WSDA. Transfer of this program does not affect the validity of any act performed before the effective date of the transfer.

The sum of \$500,000 is appropriated from the State General Fund to Ecology for the purpose of conducting a study on the use of imidacloprid for the control of burrowing shrimp in Willapa Bay and Grays Harbor.

The sum of \$1,000,000 is appropriated from the State Toxics Account to the WSDA for the purposes of studying the impacts of the use of imidacloprid as a means to control burrowing shrimp, and to continue efforts to employ an accepted integrated pest management approach to burrowing shrimp in Willapa Bay and Grays Harbor. The WSDA must report to the Legislature by June 30, 2020 on the progress and results of the monitoring program.

The issuance of an NPDES permit or waste discharge permit for the use of pesticides to control infestations of burrowing shrimp is exempt from the obligation to prepare an Environmental Impact Statement under the State Environmental Policy Act.

**Appropriation:** None.

**Fiscal Note:** Requested on Requested February 15, 2019.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.