
SECOND SUBSTITUTE SENATE BILL 6261

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Swecker, Rasmussen and Winsley)

Read first time 02/10/98.

1 AN ACT Relating to an aquatic plant management permit program;
2 amending RCW 90.48.445 and 17.24.051; reenacting and amending RCW
3 75.20.100; adding a new chapter to Title 90 RCW; creating a new
4 section; making an appropriation; providing an expiration date; and
5 declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** FINDINGS AND PURPOSE. The legislature finds
8 that it is in the best interest of the people of the state to provide
9 a predictable approach to control of aquatic plants that is protective
10 of both human health and the environment. The legislature intends,
11 through an aquatic plant management permit program, to create a
12 coordinated, timely, and predictable permit process that will assist
13 property owners and local governments in controlling aquatic plants.

14 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
15 section apply throughout this chapter, unless the context requires
16 otherwise.

17 (1) "Aquatic plant" includes any noxious weed on the state noxious
18 weed list adopted under RCW 17.10.080; any other nuisance or beneficial

1 aquatic plants not on the state noxious weed list; and any algae or
2 cyanobacteria.

3 (2) "Aquatic plant management" means controlling, eradicating, or
4 removing aquatic plants through chemical, biological, or mechanical
5 means.

6 (3) "Aquatic plant management plan" means any plan that reviews
7 alternative aquatic plant management methods according to the
8 principles of integrated pest management, as defined in RCW
9 17.15.010(1), determines feasible, effective solutions to be
10 implemented, and provides for the monitoring and evaluation of the
11 plan's effectiveness.

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

13 (5) "Person" means an individual or a public or private entity or
14 organization and includes local, state, and federal government
15 agencies, and all business organizations including corporations and
16 partnerships.

17 NEW SECTION. **Sec. 3.** AQUATIC PLANT MANAGEMENT PERMIT. No person
18 may control, eradicate, remove, or otherwise alter any aquatic plants
19 in waters of the state unless an aquatic plant management permit for
20 such activity has been issued by the department, or unless: (1) The
21 removal is incidental or unintentional, (2) the activity removes
22 noxious weeds with hand tools, or (3) the activity is in waters
23 expressly exempted by this chapter or by rule. Application for an
24 aquatic plant management permit to engage in aquatic plant management
25 activities shall be made to the department.

26 NEW SECTION. **Sec. 4.** RULE MAKING. (1) The department and the
27 department of agriculture shall jointly develop rules to implement the
28 aquatic plant management permit program, in consultation with the
29 department of natural resources, the department of health, the
30 department of fish and wildlife, and the state noxious weed board. The
31 rules shall be adopted by the department. The rules shall be oriented
32 towards developing solutions to noxious and nuisance aquatic plant
33 problems, shall provide first for the protection of human health, and
34 second for the protection of wildlife and the environment, and shall
35 provide for measurable results. The rules shall also be based on the
36 principles of integrated pest management as defined in RCW 17.15.010(1)
37 and shall define a tiered approach to aquatic plant management,

1 including the tiers described in section 5 of this act. The rules
2 shall include, at a minimum, the following elements:

3 (a) The submittal requirements for a permit application;

4 (b) Criteria for issuing, modifying, or denying permit
5 applications;

6 (c) Operating and threshold requirements for chemical, biological,
7 and mechanical controls based on the risk assessment in subsection (2)
8 of this section;

9 (d) An administrative appeals process;

10 (e) An opportunity for public comment on permit applications;

11 (f) Penalties and remedies for noncompliance by an applicant or the
12 department;

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

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

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

20 (2) The department and the department of agriculture shall contract
21 for a risk assessment of alternative aquatic plant management methods.
22 Consultants may be nominated by national scientific organizations or by
23 the public. Review of chemical control methods shall focus on issues
24 specific to Washington state that are not addressed through federal
25 pesticide registration and labeling. Information in the risk
26 assessment shall be reviewed by experts in the fields of aquatic plant
27 management and water quality, and shall be used to develop the
28 operating and threshold requirements referenced in subsection (1)(c) of
29 this section.

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

33 NEW SECTION. **Sec. 5.** TIERED APPROACH. (1) The aquatic plant
34 management permit program shall include a tiered approach to aquatic
35 plant management. At a minimum, the permit program shall include the
36 following tiers:

37 (a) An expedited permit may be approved for aquatic plant
38 management activities on lakes less than five acres where the following

1 criteria are met: (i) There is no outlet; (ii) there are no salmonid
2 fish in the lake; (iii) there is no drinking water use of the lake;
3 (iv) there is no swimming; and (v) the lake is in single ownership or
4 all owners support the exemption. Applicants for an expedited permit
5 under this subsection shall submit a notification that establishes
6 compliance with these criteria and describes measures to ensure
7 compliance with the limitations on drinking water and swimming use
8 during the management activities. The department shall review the
9 notification compliance with the criteria, and may deny the permit only
10 for inapplicability of the criteria or inadequate measure to enforce
11 the limitations of the criteria. If the department does not make a
12 decision on the permit within thirty days of receiving the
13 notification, the permit is deemed approved. In such lakes, any state-
14 registered aquatic pesticide may be used. Use of the pesticide shall
15 be conducted in a manner to protect human health and safety, and to
16 prevent injury to nontargeted plant and animal life.

17 (b) The operating and threshold requirements of the aquatic plant
18 management permit established in section 4(1)(c) of this act shall
19 provide procedures and criteria by which information developed through
20 site-specific review in completing the lake management or aquatic
21 vegetation management plan may be used to formulate specific permit
22 provisions. State environmental policy act review under chapter 43.21C
23 RCW must be completed for any aquatic plant management plan. Waters
24 with adopted aquatic plant management plans may be issued a multiyear
25 aquatic plant management permit.

26 (c) Pilot use of state-registered aquatic pesticides that does not
27 meet the operating requirements in section 4(1)(c) of this act may be
28 permitted to develop solutions to noxious and nuisance conditions
29 affecting the public health, to address early infestation of noxious
30 weeds, and for the purpose of data collection and research to assist
31 the department with the review and revision of the operating
32 requirements of the aquatic plant management permit program.

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

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

1 NEW SECTION. **Sec. 6.** PERMIT COORDINATION. The rules developed by
2 the department and the department of agriculture to implement the
3 aquatic plant management permit program shall include the requirements
4 of other aquatic plant management permitting programs, including the
5 water quality permit required by RCW 90.48.445, the hydraulic project
6 approval required by RCW 75.20.100 and 75.20.108, and the special
7 permit for biological control required by RCW 17.24.051. Issuance of
8 an aquatic plant management permit satisfies the requirements of RCW
9 90.48.445, 75.20.100, and 17.24.051. If an application for an aquatic
10 plant management permit includes biological control methods, the
11 department shall defer to the department of agriculture and the
12 requirements of RCW 17.24.051. If an application for an aquatic plant
13 management permit includes mechanical control methods, the department
14 shall defer to the department of fish and wildlife and the requirements
15 of RCW 75.20.100 and 75.20.108.

16 NEW SECTION. **Sec. 7.** DEMONSTRATION PROJECT. (1) Control of
17 Eurasian watermilfoil is a growing problem in Washington lakes and
18 rivers. No aquatic pesticides currently authorized for aquatic use by
19 the department of ecology have been effective in eradicating Eurasian
20 watermilfoil in large water bodies. With no available chemical control
21 methods, early infestation of Eurasian watermilfoil will spread both
22 within and between lakes.

23 (2) The department of ecology shall establish and administer a
24 demonstration project for the control of Eurasian watermilfoil, for the
25 purpose of evaluating the effectiveness of the pesticide 2,4-D at
26 eradicating early infestations. The department shall authorize one or
27 more demonstration projects, including a demonstration project on Loon
28 Lake in Stevens county.

29 (3) Demonstration projects shall be administered at the local level
30 by a county weed board. The department of ecology shall enter into
31 grant agreements with demonstration project jurisdictions by June 1,
32 1998. The grant agreement shall include reporting requirements,
33 timelines, and a fund disbursement schedule based on agreed project
34 milestones.

35 (4) A local match of fifty percent of the total grant amount is
36 required for any demonstration project.

1 (5) Information gathered through the demonstration projects shall
2 be used by the department of ecology in developing the rules under
3 section 4 of this act.

4 (6) This section shall expire on July 1, 1999.

5 NEW SECTION. **Sec. 8.** CAPTIONS NOT LAW. Captions used in this
6 chapter are not any part of the law.

7 **Sec. 9.** RCW 75.20.100 and 1997 c 385 s 1 and 1997 c 290 s 4 are
8 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

1 (d) For purposes of this section, "standard permit" means a written
2 permit issued by the department when the conditions under subsections
3 (3) and (6)(b) of this section are not met.

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

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

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

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

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

37 (5) If any person or government agency commences construction on
38 any hydraulic works or projects subject to this section without first
39 having obtained approval of the department as to the adequacy of the

1 means proposed for the protection of fish life, or if any person or
2 government agency fails to follow or carry out any of the requirements
3 or conditions as are made a part of such approval, the person or
4 director of the agency is guilty of a gross misdemeanor. If any such
5 person or government agency is convicted of violating any of the
6 provisions of this section and continues construction on any such works
7 or projects without fully complying with the provisions hereof, such
8 works or projects are hereby declared a public nuisance and shall be
9 subject to abatement as such.

10 (6)(a) In case of an emergency arising from weather or stream flow
11 conditions or other natural conditions, the department, through its
12 authorized representatives, shall issue immediately, upon request, oral
13 approval for removing any obstructions, repairing existing structures,
14 restoring stream banks, or to protect property threatened by the stream
15 or a change in the stream flow without the necessity of obtaining a
16 written approval prior to commencing work. Conditions of an oral
17 approval to protect fish life shall be established by the department
18 and reduced to writing within thirty days and complied with as provided
19 for in this section. Oral approval shall be granted immediately, upon
20 request, for a stream crossing during an emergency situation.

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

24 (c) The department or the county legislative authority may declare
25 and continue an emergency when one or more of the criteria under (b) of
26 this subsection are met. The county legislative authority shall
27 immediately notify the department if it declares an emergency under
28 this subsection.

29 (7) The department shall, at the request of a county, develop five-
30 year maintenance approval agreements, consistent with comprehensive
31 flood control management plans adopted under the authority of RCW
32 86.12.200, or other watershed plan approved by a county legislative
33 authority, to allow for work on public and private property for bank
34 stabilization, bridge repair, removal of sand bars and debris, channel
35 maintenance, and other flood damage repair and reduction activity under
36 agreed-upon conditions and times without obtaining permits for specific
37 projects.

38 (8) This section shall not apply to the construction of any form of
39 hydraulic project or other work which diverts water for agricultural

1 irrigation or stock watering purposes authorized under or recognized as
2 being valid by the state's water codes, or when such hydraulic project
3 or other work is associated with streambank stabilization to protect
4 farm and agricultural land as defined in RCW 84.34.020. These
5 irrigation or stock watering diversion and streambank stabilization
6 projects shall be governed by RCW 75.20.103.

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

11 (9) A permit issued under section 3 of this act satisfies the
12 requirements under this section.

13 (10) For the purposes of this section and RCW 75.20.103, "bed"
14 means the land below the ordinary high water lines of state waters.
15 This definition does not include irrigation ditches, canals, storm
16 water run-off devices, or other artificial watercourses except where
17 they exist in a natural watercourse that has been altered by man.

18 ~~((+10+))~~ (11) The phrase "to construct any form of hydraulic
19 project or perform other work" does not include the act of driving
20 across an established ford. Driving across streams or on wetted stream
21 beds at areas other than established fords requires approval. Work
22 within the ordinary high water line of state waters to construct or
23 repair a ford or crossing requires approval.

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

26 (1) The director shall issue or approve water quality permits for
27 use by federal, state, or local governmental agencies and licensed
28 applicators for the purpose of using, for aquatic noxious weed control,
29 herbicides and surfactants registered under state or federal pesticide
30 control laws. The issuance of the permits shall be subject only to
31 compliance with: Federal and state pesticide label requirements, the
32 requirements of the federal insecticide, fungicide, and rodenticide
33 act, the Washington pesticide control act, the Washington pesticide
34 application act, and the state environmental policy act; and applicable
35 requirements established in an option or options recommended for
36 controlling the noxious weed by a final environmental impact statement
37 published under chapter 43.21C RCW by the department prior to May 5,
38 1995, by the department of agriculture, or by the department of

1 agriculture jointly with other state agencies. This section may not be
2 construed as requiring the preparation of a new environmental impact
3 statement to replace a final environmental impact statement published
4 before May 5, 1995.

5 (2) The director of ecology may not utilize this permit authority
6 to otherwise condition or burden weed control efforts. The director's
7 authority to issue water quality modification permits for activities
8 other than the application of surfactants and approved herbicides, to
9 control aquatic noxious weeds, is unaffected by this section.

10 (3) A permit issued under section 3 of this act satisfies the
11 permit requirements under this section.

12 (4) As used in this section, "aquatic noxious weed" means an
13 aquatic weed on the state noxious weed list adopted under RCW
14 17.10.080.

15 **Sec. 11.** RCW 17.24.051 and 1991 c 257 s 9 are each amended to read
16 as follows:

17 The introduction into or release within the state of a plant pest,
18 noxious weeds, bee pest, or any other organism that may directly or
19 indirectly affect the plant life of the state as an injurious pest,
20 parasite, predator, or other organism is prohibited, except under
21 special permit issued by the department under rules adopted by the
22 director. A special permit is not required if a permit has been issued
23 under section 3 of this act. A special permit is not required for the
24 introduction or release within the state of a genetically engineered
25 plant or plant pest organism if the introduction or release has been
26 approved under provisions of federal law and the department has been
27 notified of the planned introduction or release. The department shall
28 be the sole issuing agency for the permits. Except for research
29 projects approved by the department, no permit for a biological control
30 agent shall be issued unless the department has determined that the
31 parasite, predator, or plant pathogen is target organism or plant
32 specific and not likely to become a pest of nontarget plants or other
33 beneficial organisms. The director may also exclude biological control
34 agents that are infested with parasites determined to be detrimental to
35 the biological control efforts of the state. The department may rely
36 upon findings of the United States department of agriculture or any
37 experts that the director may deem appropriate in making a
38 determination about the threat posed by such organisms. In addition,

1 the director may request confidential business information subject to
2 the conditions in RCW 17.24.061.

3 Plant pests, noxious weeds, or other organisms introduced into or
4 released within this state in violation of this section shall be
5 subject to detention and disposition as otherwise provided in this
6 chapter.

7 NEW SECTION. **Sec. 12.** Sections 1 through 6 and 8 of this act
8 constitute a new chapter in Title 90 RCW.

9 NEW SECTION. **Sec. 13.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 14.** Sections 8 and 9 of this act are necessary
14 for the immediate preservation of the public peace, health, or safety,
15 or support of the state government and its existing public
16 institutions, and take effect immediately.

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