

# SENATE BILL REPORT

## ESHB 1489

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As of March 10, 2011

**Title:** An act relating to protecting water quality through restrictions on fertilizer containing phosphorus.

**Brief Description:** Protecting water quality through restrictions on fertilizer containing phosphorus.

**Sponsors:** House Committee on Environment (originally sponsored by Representatives Billig, Morris, Frockt, Carlyle, Crouse, Ryu, Finn, Jinkins, Fitzgibbon, Tharinger, Rolfes, Lias, Moscoso, Stanford, Dunshee, Pettigrew, Ladenburg, Ormsby, Van De Wege, Moeller, Hunt, Pedersen, Maxwell, Roberts, Reykdal, Kagi, Darneille, Clibborn, Jacks and Kenney).

**Brief History:** Passed House: 2/28/11, 58-39.

**Committee Activity:** Environment, Water & Energy: 3/09/11.

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Staff:** Karen Epps (786-7424)

**Background:** Phosphorus is a nutrient essential to both plant and animal life. Excess amounts of phosphorus in wastewater discharges can cause excessive aquatic plant growth in our streams and rivers. These plants can cause adverse water quality conditions by decreasing sunlight penetration, depleting dissolved oxygen during the night, and interfering with boating and other water uses.

The sale of laundry detergent that contains 0.5 percent or more phosphorous by weight is prohibited. Since July 1, 2008, dishwashing detergent that contains 0.5 percent or more phosphorus by weight in counties located east of the crest of the Cascade Mountains is prohibited where the population is less than 600,000 but greater than 390,000. Beginning July 1, 2010, the restriction on the sale of dishwashing detergent that contains more than 0.5 percent or more phosphorous by weight is effective statewide. The sale and distribution of detergents for commercial and industrial uses are exempt from the phosphorus limitation.

Commercial fertilizer must be registered with the Washington Department of Agriculture (WSDA) to be distributed. Registering with the WSDA includes the creation of a label for each product. Most packaged commercial fertilizers must have, placed on or affixed to the package, a conspicuous label stating in a clear, legible form the product name, the net weight,

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the brand, and the grade. Both the registration form submitted to the WSDA and label must identify if the products are waste-derived fertilizers, micronutrient fertilizers, or fertilizer materials containing phosphate. It is unlawful to distribute misbranded commercial fertilizer.

**Summary of Bill:** Beginning on January 1, 2013, the sale and application of turf fertilizer that is labeled as containing phosphorus to turf is prohibited. Additionally, a person may not apply turf fertilizer to turf when the ground is frozen or intentionally apply turf fertilizer to an impervious surface. These prohibitions do not apply if the fertilizer is being used to establish or repair grass during a growing season, for adding phosphorus to soils with deficient plant-available phosphorus levels, or for application to pasture lands, houseplants, flower or vegetable gardens, or agricultural or silvicultural lands. Retailers may not display turf fertilizers labeled as containing phosphorus unless the product is also labeled for one of the permitted uses.

Local governments may adopt more restrictive ordinances on the use of phosphorous-containing fertilizer. Local governments are not required to enforce or monitor compliance with the restrictions on the sale and application of turf fertilizer. Local governments may not adopt a local ordinance that is less restrictive than the sale and application of turf fertilizer restrictions contained in this act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill takes effect on January 1, 2013.

**Staff Summary of Public Testimony:** PRO: Phosphorus contributes to toxic algae blooms that are dangerous to our wildlife, pets, and people. It is a significant problem all over the state, particularly in Lake Spokane, Green Lake, and Lake Whatcom, but also in many other water bodies throughout our state. This bill will make our lakes and rivers cleaner and healthier by limiting the use of phosphorus in certain fertilizers, and provides that those users that need fertilizer with phosphorus will be able to continue using fertilizer with phosphorus. Phosphorus is not needed on healthy lawns, but it is often applied unnecessarily. In other states where this has been implemented there has been a reduction in phosphorus in the water and an improvement in water quality with no ill effects on lawns. This bill will deal with non-point pollutions without putting a burden onto our citizens, and will address one source of phosphorus that pollutes our rivers and lakes. This approach to controlling pollutants is applicable statewide. This is a cost-effective way to address this non-point pollution. This bill provides an easy way to reduce phosphorus loading in our fresh water bodies and make them safe for swimming, boating, and public use. Algae feeds on phosphorus. Algae blooms affect everyone who uses the lake. This is a proactive way to protect water quality. Recently, EPA has approved this type of legislation as a load reduction method in Total Maximum Daily Loads (TMDLs), which can save local jurisdictions hundreds of thousands of dollars in TMDL work. Organic formulation binds to the root hairs and the soil particles, so it is a low leachable phosphorus component. This bill will help with compliance with the TMDL on the Spokane River, and is modeled after a similar bill that passed in Wisconsin.

CON: What soil scientists and agricultural producers know is that the unique characteristic of phosphorus is to tie up or bond with the soil particles. Therefore, if phosphorus moves at all, it is at a very low rate at or near soil saturation. Phosphorus is phosphorus no matter what the source, so differentiating from organic and inorganic phosphorus is not logical. This bill needs some accountability measures, including determining where the phosphorus is coming from and if this bill is making a difference. There needs to be an educational model involving the 4-Rs, the right product, applied at the right rate, at the right time, and in the right place. The flaws in the bill include the wild statements at the beginning and the exemption for organics. There is interest in seeing golf course superintendents who are trained and certified be exempt from this bill. Less than 0.1 percent of Washington's water bodies have high phosphorus levels. Phosphorus gets into the water from many sources, including decaying vegetation, failing septic systems, pet waste, and geese; can all be significant contributors. Regulating something because it is easy without addressing root causes of the problem accomplishes nothing. Factors responsible for algae blooms are complex and no individual environmental cause controls algae blooms. Several jurisdictions have limited the use of phosphorus fertilizer and none of them have shown improvements connected to the ban.

OTHER: This bill addresses WSDA as the lead agency, focuses the restrictions to turf fertilizer, and fixes the inconsistencies that existed between the regulatory requirements for use and the regulatory requirements for distribution. There are two remaining concerns with the bill, specifically whether fertilizers derived from organic materials and biosolids should be exempt and whether violations of the use should be different than other violations concerning the regulation of fertilizer. Professionalism and competency cannot be legislated. This is a feel good mandate for a real problem. There is a serious need to continue to educate everyone on the use of fertilizer, not just fertilizer containing phosphorus. It would be helpful if there was a sell through option to allow retailers to sell their existing inventory, rather than having to pack it up and ship it out of state.

**Persons Testifying:** PRO: Representative Billig, prime sponsor; Jonathan Frodge, City of Seattle; Joe Daniels, WA Lakes Protection Assn.; Beth leDoux, King County; Jerry Smedes, Perfect Blend Organics; Melissa Gombosky, Inland Empire Paper Company; Cliff Traisman, WA Environmental Council, WA Conservation Voters; Neil Beaver, The Lands Council, WA Audubon; Mitch Denning, Alliance of Educational Assn.; Charlie Brown, Scotts Miracle Gro.

CON: Tom McBride, Far West Agribusiness Assn.; Joanne McNeil, WA State Nursery, Landscape Assn.; Paul Ramsdell, Western WA Golf Course Superintendent Assn.; Heather Hanson, WA Friends of Farms and Forests, WA Assn. of Professional Landscapers.

OTHER: Ted Maxwell, WSDA; Linda Whitehead, Whitehead Landscape and Design; Mark Johnson, WA Retail Assn.