
SENATE BILL 5626

State of Washington

66th Legislature

2019 Regular Session

By Senators Takko, Warnick, Hobbs, Honeyford, and Van De Wege

1 AN ACT Relating to ensuring the safe and productive cultivation
2 of shellfish; amending RCW 90.48.260 and 43.21C.0383; adding new
3 sections to chapter 90.48 RCW; creating a new section; making
4 appropriations; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the cultivation
7 of shellfish in Willapa Bay and Grays Harbor is an important part of
8 the economy of southwest Washington. That economic sector is
9 threatened by the continued invasion of burrowing shrimp onto the
10 tidelands of Willapa Bay and Grays Harbor, rendering those tidelands
11 useless for shellfish aquaculture and causing significant damage to
12 the ecosystem. The inability to control this invasion since 2015
13 poses a significant risk to the economy and ecosystems of Willapa Bay
14 and Grays Harbor. The legislature hereby declares a state of
15 emergency and directs state agencies to utilize all resources to
16 coordinate a response to this emergency in order to preserve the
17 economy and ecology of Willapa Bay and Grays Harbor.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.48
19 RCW to read as follows:

1 By May 15, 2019, the department shall authorize the use of
2 imidacloprid to control infestations of burrowing shrimp in Willapa
3 Bay and Grays Harbor for the 2019 treatment season. The authorization
4 must be issued to any entity that applied for, or was part of any
5 group that applied for, a national pollution discharge elimination
6 system permit as of January 2016. Such an authorization must be
7 limited to an aggregate maximum of one thousand acres of imidacloprid
8 application during the 2019 treatment season.

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

11 (1) By April 15, 2020, the department shall issue a national
12 pollutant discharge elimination system permit for the use of
13 pesticides to control infestations of burrowing shrimp in association
14 with the cultivation of shellfish. With the exception of the
15 requirements set forth in subsection (2) of this section, the
16 department may not impose limitations, standards, or monitoring
17 requirements in connection with such a permit that are any more
18 stringent than those contained in the federal registration for any
19 pesticide subject to the permit.

20 (2) The national pollutant discharge elimination system permit
21 issued pursuant to this section must comply with the following
22 requirements:

23 (a) The permit must limit the total treated acreage under the
24 permit to an aggregate maximum of one thousand acres per year; and

25 (b) The permit must prohibit the use of helicopters to apply
26 pesticides under the permit.

27 (3) The use of pesticides to control burrowing shrimp in
28 connection with the cultivation of shellfish under a permit issued
29 pursuant to this section is exempt from the requirements of RCW
30 90.48.160, chapter 43.21C RCW, and chapter 173-204 WAC.

31 (4) For the purposes of this section, "cultivation of shellfish"
32 means the cultivation of shellfish on private or public facilities,
33 or both, located within the marine waters of the state in Willapa Bay
34 and Grays Harbor.

35 **Sec. 4.** RCW 90.48.260 and 2012 1st sp.s. c 1 s 313 are each
36 amended to read as follows:

37 (1) The department of ecology is hereby designated as the state
38 water pollution control agency for all purposes of the federal clean

1 water act as it exists on February 4, 1987, and is hereby authorized
2 to participate fully in the programs of the act as well as to take
3 all action necessary to secure to the state the benefits and to meet
4 the requirements of that act. With regard to the national estuary
5 program established by section 320 of that act, the department shall
6 exercise its responsibility jointly with the Puget Sound partnership,
7 created in RCW 90.71.210. The department of ecology may delegate its
8 authority under this chapter, including its national pollutant
9 discharge elimination permit system authority and duties regarding
10 animal feeding operations and concentrated animal feeding operations,
11 to the department of agriculture through a memorandum of
12 understanding. Until any such delegation receives federal approval,
13 the department of agriculture's adoption or issuance of animal
14 feeding operation and concentrated animal feeding operation rules,
15 permits, programs, and directives pertaining to water quality shall
16 be accomplished after reaching agreement with the director of the
17 department of ecology. Adoption or issuance and implementation shall
18 be accomplished so that compliance with such animal feeding operation
19 and concentrated animal feeding operation rules, permits, programs,
20 and directives will achieve compliance with all federal and state
21 water pollution control laws. With regard to the regulation of
22 pesticides used to control burrowing shrimp on tidelands in Willapa
23 Bay and Grays Harbor, the department shall delegate its authority
24 under this chapter, including its national pollutant discharge
25 elimination permit system authority and duties, to the department of
26 agriculture through a memorandum of understanding, effective July 1,
27 2020. Until such a delegation of authority receives federal approval,
28 the department of agriculture's adoption or issuance of water quality
29 rules, permits, programs, and directives regarding the application of
30 pesticides used to control burrowing shrimp on tidelands in Willapa
31 Bay and Grays Harbor must be accomplished after reaching agreement
32 with the director of the department. Adoption or issuance and
33 implementation must be accomplished so that compliance with all
34 rules, permits, programs, and directives will achieve compliance with
35 all federal and state water pollution control laws. The powers
36 granted herein include, among others, and notwithstanding any other
37 provisions of this chapter or otherwise, the following:

38 (a) Complete authority to establish and administer a
39 comprehensive state point source waste discharge or pollution
40 discharge elimination permit program which will enable the department

1 to qualify for full participation in any national waste discharge or
2 pollution discharge elimination permit system and will allow the
3 department to be the sole agency issuing permits required by such
4 national system operating in the state of Washington subject to the
5 provisions of RCW 90.48.262(2). Program elements authorized herein
6 may include, but are not limited to: (i) Effluent treatment and
7 limitation requirements together with timing requirements related
8 thereto; (ii) applicable receiving water quality standards
9 requirements; (iii) requirements of standards of performance for new
10 sources; (iv) pretreatment requirements; (v) termination and
11 modification of permits for cause; (vi) requirements for public
12 notices and opportunities for public hearings; (vii) appropriate
13 relationships with the secretary of the army in the administration of
14 his or her responsibilities which relate to anchorage and navigation,
15 with the administrator of the environmental protection agency in the
16 performance of his or her duties, and with other governmental
17 officials under the federal clean water act; (viii) requirements for
18 inspection, monitoring, entry, and reporting; (ix) enforcement of the
19 program through penalties, emergency powers, and criminal sanctions;
20 (x) a continuing planning process; and (xi) user charges.

21 (b) The power to establish and administer state programs in a
22 manner which will ensure the procurement of moneys, whether in the
23 form of grants, loans, or otherwise; to assist in the construction,
24 operation, and maintenance of various water pollution control
25 facilities and works; and the administering of various state water
26 pollution control management, regulatory, and enforcement programs.

27 (c) The power to develop and implement appropriate programs
28 pertaining to continuing planning processes, area-wide waste
29 treatment management plans, and basin planning.

30 (2) The governor shall have authority to perform those actions
31 required of him or her by the federal clean water act.

32 (3) By July 31, 2012, the department shall:

33 (a) Reissue without modification and for a term of one year any
34 national pollutant discharge elimination system municipal stormwater
35 general permit applicable to western Washington municipalities first
36 issued on January 17, 2007; and

37 (b) Issue an updated national pollutant discharge elimination
38 system municipal stormwater general permit applicable to western
39 Washington municipalities for any permit first issued on January 17,

1 2007. An updated permit issued under this subsection shall become
2 effective beginning August 1, 2013.

3 (i) Provisions of the updated permit issued under (b) of this
4 subsection relating to new requirements for low-impact development
5 and review and revision of local development codes, rules, standards,
6 or other enforceable documents to incorporate low-impact development
7 principles must be implemented simultaneously. These requirements may
8 go into effect no earlier than December 31, 2016, or the time of the
9 scheduled update under RCW 36.70A.130(5), as existing on July 10,
10 2012, whichever is later.

11 (ii) Provisions of the updated permit issued under (b) of this
12 subsection related to increased catch basin inspection and illicit
13 discharge detection frequencies and application of new stormwater
14 controls to projects smaller than one acre may go into effect no
15 earlier than December 31, 2016, or the time of the scheduled update
16 under RCW 36.70A.130(5), as existing on July 10, 2012, whichever is
17 later.

18 (4) By July 31, 2012, the department shall:

19 (a) Reissue without modification and for a term of two years any
20 national pollutant discharge elimination system municipal stormwater
21 general permit applicable to eastern Washington municipalities first
22 issued on January 17, 2007; and

23 (b) Issue an updated national pollutant discharge elimination
24 system municipal stormwater general permit for any permit first
25 issued on January 17, 2007, applicable to eastern Washington
26 municipalities. An updated permit issued under this subsection
27 becomes effective August 1, 2014.

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.48
29 RCW to read as follows:

30 (1) All powers, duties, and functions of the department of
31 ecology pertaining to this chapter as it relates to the regulation of
32 pesticides used to control burrowing shrimp on tidelands in Willapa
33 Bay and Grays Harbor are transferred to the department of agriculture
34 effective July 1, 2020. All references to the director or the
35 department of ecology in the Revised Code of Washington mean the
36 director or the department of agriculture when referring to the
37 functions transferred in this section. The department shall work
38 expeditiously with the department of agriculture to obtain any and
39 all approvals for the department of agriculture to assume national

1 pollutant discharge elimination system permit issuance and
2 enforcement authority for the regulation of pesticides used to
3 control burrowing shrimp on tidelands in Willapa Bay and Grays Harbor
4 under the federal clean water act.

5 (2)(a) All reports, documents, surveys, books, records, files,
6 papers, or written material in the possession of the department of
7 ecology pertaining to the powers, duties, and functions transferred
8 must be delivered to the custody of the department of agriculture.
9 All cabinets, furniture, office equipment, motor vehicles, and other
10 tangible property employed by the department of ecology in carrying
11 out the powers, duties, and functions transferred must be made
12 available to the department of agriculture. All funds, credits, or
13 other assets held in connection with the powers, duties, and
14 functions transferred are assigned to the department of agriculture.

15 (b) Any appropriations made to the department of ecology for
16 carrying out the powers, duties, and functions transferred are, on
17 the effective date of this section, transferred and credited to the
18 department of agriculture.

19 (c) Whenever any question arises as to the transfer of any
20 personnel, funds, books, documents, records, papers, files,
21 equipment, or other tangible property used or held in the exercise of
22 the powers and the performance of the duties and functions
23 transferred, the director of financial management shall make a
24 determination as to the proper allocation and certify the same to the
25 state agencies concerned.

26 (3) All employees of the department of ecology engaged in
27 performing the powers, duties, and functions transferred are
28 transferred to the jurisdiction of the department of agriculture. All
29 employees classified under chapter 41.06 RCW, the state civil service
30 law, are assigned to the department of agriculture to perform their
31 usual duties upon the same terms as formerly, without any loss of
32 rights, subject to any action that may be appropriate thereafter in
33 accordance with the laws and rules governing state civil service.

34 (4) All rules and all pending business before the department of
35 ecology pertaining to the powers, duties, and functions transferred
36 shall be continued and acted upon by the department of agriculture.
37 All existing contracts and obligations remain in full force and shall
38 be performed by the department of agriculture.

1 (5) The transfer of the powers, duties, functions, and personnel
2 of the department of ecology does not affect the validity of any act
3 performed before the effective date of this section.

4 (6) If apportionments of budgeted funds are required because of
5 the transfers directed by this section, the director of financial
6 management shall certify the apportionments to the agencies affected,
7 the state auditor, and the state treasurer. Each of these shall make
8 the appropriate transfer and adjustments in funds and appropriation
9 accounts and equipment records in accordance with the certification.

10 (7) All classified employees of the department of ecology
11 assigned to the department of agriculture under this section whose
12 positions are within an existing bargaining unit description at the
13 department of agriculture must become a part of the existing
14 bargaining unit at the department of agriculture and are considered
15 an appropriate inclusion or modification of the existing bargaining
16 unit under the provisions of chapter 41.80 RCW.

17 NEW SECTION. **Sec. 6.** The sum of five hundred thousand dollars,
18 or as much thereof as may be necessary, is appropriated for the
19 fiscal year ending June 30, 2020, from the state general fund to the
20 department of ecology for the purpose of conducting a study on the
21 use of imidacloprid for the control of burrowing shrimp in Willapa
22 Bay and Grays Harbor.

23 NEW SECTION. **Sec. 7.** (1)(a) The sum of one million dollars, or
24 as much thereof as may be necessary, is appropriated for the fiscal
25 biennium ending June 30, 2021, from the state toxics control account
26 to the department of agriculture for the purposes of studying the
27 impacts of the use of imidacloprid as a means to control burrowing
28 shrimp and related costs, and to continue efforts to employ an
29 accepted integrated pest management approach to managing the
30 burrowing shrimp infestation in Willapa Bay and Grays Harbor.

31 (b) Permissible department expenses include, but are not limited
32 to, oversight and participation on a technical advisory committee,
33 technical assistance, planning, and reporting activities.

34 (c) The department of agriculture may also use the funding
35 provided in this section, as needed, for payments to Washington State
36 University, the United States department of agriculture, and outside
37 consultants for their participation in the monitoring program and
38 technical advisory committee.

1 (2) The department of agriculture must report to the appropriate
2 committees of the legislature by June 30, 2020, on the progress and
3 results of the monitoring program.

4 **Sec. 8.** RCW 43.21C.0383 and 2008 c 37 s 2 are each amended to
5 read as follows:

6 The following waste discharge permit actions are not subject to
7 the requirements of RCW 43.21C.030(2)(c):

8 (1) For existing discharges, the issuance, reissuance, or
9 modification of a waste discharge permit that contains conditions no
10 less stringent than federal effluent limitations and state rules;

11 (2) The issuance of a construction stormwater general permit
12 under chapter 90.48 RCW for a proposal disturbing less than five
13 acres. The exemption in this subsection does not apply if, under
14 rules adopted by the department of ecology, the proposal would
15 otherwise be subject to the requirements of RCW 43.21C.030(2)(c); and

16 (3) The issuance of a national pollutant discharge elimination
17 system permit or waste discharge permit pursuant to section 2 or 3 of
18 this act for the use of pesticides to control infestations of
19 burrowing shrimp in association with the cultivation of shellfish.

20 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of
22 the state government and its existing public institutions, and takes
23 effect immediately.

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