

CHAPTER 153

[Substitute Senate Bill No. 4684]

PLANT PESTS AND DISEASES—EMERGENCY PREVENTION MEASURES—
LIABILITY—APPROPRIATION

AN ACT Relating to plant pests and diseases; amending section 43.06.010, chapter 8, Laws of 1965 as last amended by section 4, chapter 53, Laws of 1979 ex. sess. and RCW 43.06.010; amending section 8, chapter 113, Laws of 1969 and RCW 15.09.080; adding new sections to chapter 17.24 RCW; making an appropriation; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 43.06.010, chapter 8, Laws of 1965 as last amended by section 4, chapter 53, Laws of 1979 ex. sess. and RCW 43.06.010 are each amended to read as follows:

In addition to those prescribed by the Constitution, the governor may exercise the powers and perform the duties prescribed in this and the following sections:

(1) The governor shall supervise the conduct of all executive and ministerial offices;

(2) The governor shall see that all offices are filled, and the duties thereof performed, or in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session;

(3) The governor shall make the appointments and supply the vacancies mentioned in this title;

(4) The governor is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States;

(5) Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, the governor may direct the attorney general to appear on behalf of the state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;

(6) The governor may require the attorney general or any prosecuting attorney to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;

(7) The governor may require the attorney general to aid any prosecuting attorney in the discharge of his duties;

(8) The governor may offer rewards, not exceeding one thousand dollars in each case, payable out of the state treasury, for information leading to the apprehension of any person convicted of a felony who has escaped from

a state correctional institution or for information leading to the arrest of any person who has committed or is charged with the commission of a felony;

(9) The governor shall perform such duties respecting fugitives from justice as are prescribed by law;

(10) The governor shall issue and transmit election proclamations as prescribed by law;

(11) The governor may require any officer or board to make, upon demand, special reports to the governor, in writing;

(12) The governor may, after finding that a public disorder, disaster, energy emergency, or riot exists within this state or any part thereof which affects life, health, property, or the public peace, proclaim a state of emergency in the area affected, and the powers granted the governor during a state of emergency shall be effective only within the area described in the proclamation;

(13) The governor shall, when appropriate, submit to the select joint committee created by RCW 43.131.120, lists of state agencies, as defined by RCW 43.131.030, which agencies might appropriately be scheduled for termination by a bill proposed by the select joint committee;

(14) The governor may, after finding that there exists within this state an imminent danger of infestation of plant pests as defined in RCW 17.24-.005 or plant diseases which seriously endangers the agricultural or horticultural industries of the state of Washington, or which seriously threatens life, health, or economic well-being, order emergency measures to prevent or abate the infestation or disease situation, which measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides.

NEW SECTION. Sec. 2. There is added to chapter 17.24 RCW a new section to read as follows:

(1) If the director of agriculture of the state of Washington determines that there exists an imminent danger of an infestation of plant pests or plant diseases which seriously endangers the agricultural or horticultural industries of the state of Washington, or which seriously threatens life, health, or economic well-being, he shall request the governor to order emergency measures to control the pests or plant diseases pursuant to RCW 43.06.010(14). The director's findings shall contain an evaluation of the effect of the emergency measures upon public health.

(2) The director shall appoint a committee to advise him in the development of the criteria for determining when an emergency situation exists and the procedure for implementing emergency measures. The committee shall report back to the director within one hundred twenty days of the effective date of this act. The committee shall review emergency measures performed under the authority of RCW 43.06.010(14) and this section and

make subsequent recommendations to the director. The committee shall include representatives of the agricultural industries, state and local government, public health interests, technical service providers, and environmental organizations. The public shall have access to the recommendations of the committee.

(3) Upon the order of the governor of the use of emergency measures, the director is authorized to apply such emergency measures to prevent, control, or eradicate plant pests or plant diseases that are now established or may later become established and that may seriously endanger the agricultural or horticultural industries, or which seriously threaten life, health, or economic well-being of the state of Washington. Such measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides.

(4) Upon the order of the governor of the use of emergency measures, the director is authorized to enter into agreements with individuals and/or companies to accomplish the prevention, control, or eradication of plant pests or plant diseases, notwithstanding the provisions of chapter 15.58 RCW or chapter 17.21 RCW or any other statute.

(5) The director shall continually evaluate the emergency measures taken and report to the governor at intervals of not less than ten days. The director shall immediately advise the governor if he finds that the emergency no longer exists or if certain emergency measures should be discontinued.

NEW SECTION. Sec. 3. There is added to chapter 17.24 RCW a new section to read as follows:

The director of agriculture may, on the behalf of the state of Washington, enter into indemnity contracts wherein the state of Washington agrees to repay any person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide plant pest or plant disease prevention, control, or eradication measures as provided in this chapter or any rule adopted pursuant to the provisions of this chapter, for losses and damages incurred as a result of such prevention, control, or eradication measures if all of the following conditions occur:

(1) At the time of the incident the worker is performing services as an emergency measures worker and is acting within the course of his duties as an emergency measures worker;

(2) At the time of the injury, loss, or damage, the organization providing emergency measures by which the worker is employed is an approved organization for providing emergency measures;

(3) The injury, loss, or damage is proximately caused by his service either with or without negligence as an emergency measures worker;

(4) The injury, loss, or damage is not caused by the intoxication of the worker; and

(5) The injury, loss, or damage is not due to wilful misconduct or gross negligence on the part of a worker.

Where an act or omission by an emergency services provider in the course of providing emergency services injures a person or property, the provider and the state may be jointly and severally liable for the injury, if state liability is proved under existing or hereafter enacted law.

Each person, firm, corporation, or other entity authorized to provide the prevention, control, or eradication measures implementing a program approved under section 2 of this act shall be identified on a list approved by the director. For the purposes of this section, each person on the list shall be known, for the duration of the person's services under the program, as "an emergency measures worker."

Sec. 4. Section 8, chapter 113, Laws of 1969 and RCW 15.09.080 are each amended to read as follows:

(1) Whenever the horticultural pest and disease control board finds that an owner of land has failed to control and prevent the spread of horticultural pests and diseases on his land, as is his duty under RCW 15.09.060, it shall provide such person with written notice, which notice shall identify the pests and diseases found to be present and shall order prompt control or disinfection action to be taken within a specified and reasonable time period.

(2) If the person to whom the notice is directed fails to take action in accordance with this notice, then the board shall perform or cause to be performed such measures as are necessary to control and prevent the spread of the pests and diseases on such property and the expense of this work shall be charged to such person(~~(-PROVIDED, That the board shall have no power to order the destruction of any plant))~~).

NEW SECTION. Sec. 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 6. There is appropriated to the department of agriculture from the general fund for the biennium ending June 30, 1983, the sum of three hundred thousand dollars, or so much thereof as may be necessary, for the operation and expenses of an insect detection and control program.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1982.

Passed the Senate March 10, 1982.

Passed the House March 9, 1982.

Approved by the Governor April 1, 1982.

Filed in Office of Secretary of State April 1, 1982.