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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: H-4710.5/02 5th draft

ATTY/TYPIST: SCG:seg

BRIEF DESCRIPTION:

2 E2SSB 5425 - H COMM AMD  
3 By Committee on Appropriations

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 17.24.007 and 2000 c 100 s 6 are each amended to read  
8 as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout this chapter.

11 (1) "Department" means the state department of agriculture.

12 (2) "Director" means the director of the state department of  
13 agriculture or the director's designee.

14 (3) "Quarantine" means a rule issued by the department that  
15 prohibits or regulates the movement of articles, bees, plants, or plant  
16 products from designated quarantine areas within or outside the state  
17 to prevent the spread of disease, plant pathogens, or pests to  
18 nonquarantine areas.

19 (4) "Plant pest" means a living stage of an insect, mite, nematode,  
20 slug, snail, or protozoa, or other invertebrate animal, bacteria,  
21 fungus, or parasitic plant, or their reproductive parts, or viruses, or  
22 an organism similar to or allied with any of the foregoing plant pests,  
23 including a genetically engineered organism, or an infectious substance  
24 that can directly or indirectly injure or cause disease or damage in  
25 plants or parts of plants or in processed, manufactured, or other  
26 products of plants.

27 (5) "Plants and plant products" means trees, shrubs, vines, forage,  
28 and cereal plants, and all other plants and plant parts, including  
29 cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds,  
30 wood, lumber, and all products made from the plants and plant products.

31 (6) "Certificate" or "certificate of inspection" means an official  
32 document certifying compliance with the requirements of this chapter.  
33 The term "certificate" includes labels, rubber stamp imprints, tags,  
34 permits, written statements, or a form of inspection and certification  
35 document that accompanies the movement of inspected and certified plant

1 material and plant products, or bees, bee hives, or beekeeping  
2 equipment.

3 (7) "Compliance agreement" means a written agreement between the  
4 department and a person engaged in growing, handling, or moving  
5 articles, plants, plant products, or bees, bee hives, or beekeeping  
6 equipment regulated under this chapter, in which the person agrees to  
7 comply with stipulated requirements.

8 (8) "Distribution" means the movement of a regulated article from  
9 the property where it is grown or kept, to property that is not  
10 contiguous to the property, regardless of the ownership of the  
11 properties.

12 (9) "Genetically engineered organism" means an organism altered or  
13 produced through genetic modification from a donor, vector, or  
14 recipient organism using recombinant DNA techniques, excluding those  
15 organisms covered by the food, drug and cosmetic act (21 U.S.C. Secs.  
16 301-392).

17 (10) "Person" means a natural person, individual, firm,  
18 partnership, corporation, company, society, or association, and every  
19 officer, agent, or employee of any of these entities.

20 (11) "Sell" means to sell, to hold for sale, offer for sale,  
21 handle, or to use as inducement for the sale of another article or  
22 product.

23 (12) "Noxious weed" means a living stage, including, but not  
24 limited to, seeds and reproductive parts, of a parasitic or other plant  
25 of a kind that presents a threat to Washington agriculture or  
26 environment.

27 (13) "Regulated article" means a plant or plant product, bees or  
28 beekeeping equipment, noxious weed or other articles or equipment  
29 capable of harboring or transporting plant or bee pests or noxious  
30 weeds that is specifically addressed in rules or quarantines adopted  
31 under this chapter.

32 (14) "Owner" means the person having legal ownership, possession,  
33 or control over a regulated article covered by this chapter including,  
34 but not limited to, the owner, shipper, consignee, or their agent.

35 (15) "Nuisance" means a plant, or plant part, apiary, or property  
36 found in a commercial area on which is found a pest, pathogen, or  
37 disease that is a source of infestation to other properties.

38 (16) "Bees" means adult insects, eggs, larvae, pupae, or other  
39 immature stages of the species *Apis mellifera*.

1 (17) "Bee pests" means a mite, other parasite, or disease that  
2 causes injury to bees and those honey bees generally recognized to have  
3 undesirable behavioral characteristics such as or as found in  
4 Africanized honey bees.

5 (18) "Biological control" means the use by humans of living  
6 organisms to control or suppress undesirable animals and plants; the  
7 action of parasites, predators, or pathogens on a host or prey  
8 population to produce a lower general equilibrium than would prevail in  
9 the absence of these agents.

10 (19) "Biological control agent" means a parasite, predator, or  
11 pathogen intentionally released, by humans, into a target host or prey  
12 population with the intent of causing population reduction of that host  
13 or prey.

14 (20) "Emergency" means a situation where there is an imminent  
15 danger of an infestation of plant pests or disease that seriously  
16 threatens the state's agricultural or horticultural industries or  
17 environment and that cannot be adequately addressed with normal  
18 procedures or existing resources.

19 (21) "Large urban residential area" means that area lying within  
20 the incorporated boundaries of a city with a population of greater than  
21 one hundred thousand and the urban growth area contiguous to the city,  
22 and in which residential uses are a permitted or a conditional use.

23 (22) "Asian gypsy moth" means the Asian strain of the gypsy moth  
24 *Lymantria dispar*.

25 **Sec. 2.** RCW 15.58.065 and 1989 c 380 s 5 are each amended to read  
26 as follows:

27 (1) In submitting data required by this chapter, the applicant may:

28 (a) Mark clearly any portions which in the applicant's opinion are  
29 trade secrets or commercial or financial information; and

30 (b) Submit such marked material separately from other material  
31 required to be submitted under this chapter.

32 (2) Except under section 3 of this act and notwithstanding any  
33 other provision of this chapter or other law, the director shall not  
34 make public information which in the director's judgment should be  
35 privileged or confidential because it contains or relates to trade  
36 secrets or commercial or financial information except that, when  
37 necessary to carry out the provisions of this chapter, information  
38 relating to unpublished formulas of products acquired by authorization

1 of this chapter may be revealed to any state or federal agency  
2 consulted and may be revealed at a public hearing or in findings of  
3 fact issued by the director when necessary under this chapter.

4 (3) Except under section 3 of this act, if the director proposes to  
5 release for inspection information which the applicant or registrant  
6 believes to be protected from disclosure under subsection (2) of this  
7 section, the director shall notify the applicant or registrant in  
8 writing, by certified mail. The director shall not thereafter make  
9 available for inspection such data until thirty days after receipt of  
10 the notice by the applicant or registrant. During this period, the  
11 applicant or registrant may institute an action in the superior court  
12 of Thurston county for a declaratory judgment as to whether such  
13 information is subject to protection under subsection (2) of this  
14 section.

15 NEW SECTION. Sec. 3. A new section is added to chapter 15.58 RCW,  
16 to be codified between RCW 15.58.065 and 15.58.070, to read as follows:

17 (1) When the director proposes to eradicate the Asian gypsy moth  
18 through the aerial application of pesticides within a large urban  
19 residential area as defined in RCW 17.24.007, the director shall  
20 consult with the department of health concerning unpublished formulas  
21 of products acquired by authorization of this chapter for the purpose  
22 of obtaining the department's independent assessment of the possible  
23 human health risks associated with the proposed use. The director  
24 shall consult with the department of health regarding such an  
25 application if:

26 (a) The director has not previously consulted the department of  
27 health under this section regarding the product or products;

28 (b) There has been a change in the formula of the product or  
29 products since a previous such consultation; or

30 (c) The director has been notified by the department of health that  
31 new information is available to it that would materially alter the  
32 assessment the department provided to the director in a previous  
33 consultation regarding the product or products.

34 (2) The director shall reveal to the department of health the  
35 confidential statement of formula for the purpose of assessing the  
36 possible human health risks associated with the proposed pesticide use.

37 (3) The department of health shall consider the confidential  
38 statement of formula, the proposed pesticide use, the impact on

1 affected populations, and any other considerations that may bear on  
2 public health in making an assessment of the possible human health  
3 risks.

4 (4) The director shall make any independent assessment available to  
5 the public except that the names, chemical abstract service numbers, or  
6 other identifying characteristics or percentages of inert ingredients  
7 in a pesticide, and any other information that in the director's  
8 judgment should be confidential, shall not be disclosed. Additionally,  
9 any information or documents used in preparation of an independent  
10 assessment that pertain to the confidential statement of formula and  
11 any protected trade secret information shall not be disclosed to the  
12 public by any person.

13 (5) This section shall be in addition to and shall not limit the  
14 authority of the director under any other provision of law to release  
15 to the public information relating to pesticide formula, ingredients,  
16 or other information.

17 (6) Damages may be sought under chapter 19.108 RCW with regard to  
18 an unauthorized release of the unpublished formula of a product that is  
19 the subject of a consultation under this section to any person not  
20 authorized to receive the information under this section or this  
21 chapter.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 17.24 RCW  
23 to read as follows:

24 When surveys and other measures detect the presence of the Asian  
25 gypsy moth within a large urban residential area, and when the aerial  
26 application of pesticides may be considered as a measure to eradicate  
27 the pest, the director shall provide public notice of the survey  
28 results and the alternatives for eradication measures. The director  
29 shall hold a public meeting within the area to provide information and  
30 to receive comments from the public on the survey results, and the  
31 alternatives for eradication measures. The director shall accept such  
32 comments for a period of thirty days from the date the public meeting  
33 is held, or a lesser period as the director determines if immediate  
34 action is required to implement eradication measures.

35 **Sec. 5.** RCW 17.24.171 and 1991 c 257 s 21 are each amended to read  
36 as follows:

1 (1) If the director determines that there exists an imminent danger  
2 of an infestation of plant pests or plant diseases that seriously  
3 endangers the agricultural or horticultural industries of the state, or  
4 that seriously threatens life, health, or economic well-being, the  
5 director shall request the governor to order emergency measures to  
6 control the pests or plant diseases under RCW 43.06.010(~~(+14)~~) (13).  
7 The director's findings shall contain an evaluation of the affect of  
8 the emergency measures on public health. When the requested measures  
9 include the aerial application of pesticides in a large urban  
10 residential area for the eradication of Asian gypsy moths, the findings  
11 shall also include a summary of the information relied upon in  
12 determining the extent of the danger, the alternative measures  
13 considered, and, when applicable, the director's response to the public  
14 comments received under section 4 of this act.

15 (2) If an emergency is declared pursuant to RCW 43.06.010(~~(+14)~~)  
16 (13), the director may appoint a committee to advise the governor  
17 through the director and to review emergency measures necessary under  
18 the authority of RCW 43.06.010(~~(+14)~~) (13) and this section and make  
19 subsequent recommendations to the governor. The committee shall  
20 include representatives of the agricultural and silvicultural  
21 industries, state and local government, public health interests,  
22 technical service providers, and environmental organizations.

23 (3) Upon the order of the governor of the use of emergency  
24 measures, the director is authorized to implement the emergency  
25 measures to prevent, control, or eradicate plant pests or plant  
26 diseases that are the subject of the emergency order. Such measures,  
27 after thorough evaluation of all other alternatives, may include the  
28 aerial application of pesticides.

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

35 (5) When emergency measures taken include the aerial application of  
36 pesticides in a large urban residential area for the eradication of  
37 Asian gypsy moths, the director shall implement procedures for  
38 notifying the community in the application area before each aerial  
39 application.

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

6       **Sec. 6.** RCW 43.06.010 and 1994 c 223 s 3 are each amended to read  
7 as follows:

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

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

13       (2) The governor shall see that all offices are filled, including  
14 as provided in RCW 42.12.070, and the duties thereof performed, or in  
15 default thereof, apply such remedy as the law allows; and if the remedy  
16 is imperfect, acquaint the legislature therewith at its next session;

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

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

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

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

33       (7) The governor may require the attorney general to aid any  
34 prosecuting attorney in the discharge of the prosecutor's duties;

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



1 information leading to the arrest of any person who has committed or is  
2 charged with the commission of a felony;

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

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

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

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

15 (13) The governor may, after finding that there exists within this  
16 state an imminent danger of infestation of plant pests as defined in  
17 RCW 17.24.007 or plant diseases which seriously endangers the  
18 agricultural, silvicultural, or horticultural industries of the state  
19 of Washington, or which seriously threatens life, health, or economic  
20 well-being, order emergency measures to prevent or abate the  
21 infestation or disease situation, which measures, after thorough  
22 evaluation of all other alternatives, may include the aerial  
23 application of pesticides;

24 (14) On all compacts forwarded to the governor pursuant to RCW  
25 9.46.360(6), the governor is authorized and empowered to execute on  
26 behalf of the state compacts with federally recognized Indian tribes in  
27 the state of Washington pursuant to the federal Indian Gaming  
28 Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting class III  
29 gaming, as defined in the Act, on Indian lands."

--- END ---