

HOUSE BILL REPORT

E2SSB 5425

As Reported by House Committee On:

Agriculture & Ecology
Appropriations

Title: An act relating to aerial application of pesticides to control plant pests.

Brief Description: Implementing notices and procedures regarding aerial application of pesticides to eradicate plant pests.

Sponsors: Senate Committee on Environment, Energy & Water (originally sponsored by Senators Kohl-Welles, Jacobsen and Fraser).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/28/02 [DPA];
Appropriations: 3/4/02 [DPA(APP w/o AGECS)].

Brief Summary of Engrossed Second Substitute Bill (As Amended by House Committee)

- Establishes requirements regarding aerial applications of pesticides to eradicate Asian gypsy moths in large urban residential areas.
- Requires consultation and assessment regarding possible human health risks and public notice and hearings regarding such pesticide applications, and adds requirements for requesting an order from the Governor regarding emergency measures regarding such aerial applications.
- Expressly adds threats to the silvicultural industry by infestations of plant pests or diseases to the reasons such orders by the Governor may be issued.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Linville, Chair; Hunt, Vice Chair; Cooper, Dunshee, Grant, Kirby and Quall.

Minority Report: Do not pass. Signed by 6 members: Representatives Schoesler, Ranking Minority Member; Chandler, Delvin, Holmquist, Roach and Sump.

Staff: Kenneth Hirst (786-7105).

Background:

Pesticide Registration & Disclosure. The registration and use of pesticides is regulated at the national level by the Federal Insecticide, Fungicide, and Rodenticide Act. In general, a pesticide cannot be sold or distributed within the United States unless it has been registered with the U.S. Environmental Protection Agency. The "pesticides" regulated in this manner include herbicides, insecticides, and other products that control pests. At the state level, pesticides sold or distributed within the state must be registered under the Washington Pesticide Control Act. The state act is administered by the Washington State Department of Agriculture (WSDA).

The Pesticide Control Act requires an applicant for a pesticide registration to reveal to the WSDA the complete formula of the pesticide, including the active and inert ingredients. The act prohibits this information from being revealed except to proper officials and employees of the state, state courts in response to subpoenas, and physicians or, in emergencies, to other qualified persons for the preparation of antidotes.

The state act also prohibits confidential business information regarding the pesticide that is of a proprietary nature from being disclosed to any other person. However, when necessary to administer the act, information regarding unpublished formulas of products may be revealed to a state or federal agency or, under certain circumstances, at a public hearing or in findings of fact. In such a case, the registrant of the pesticide is to be given the opportunity to institute an action in the superior court for a declaratory judgment regarding whether the information is subject to protection from disclosure.

If the director of Agriculture determines that an imminent danger of an infestation of plant pests or plant diseases exists that seriously endangers the agricultural or horticultural industries of the state, or that seriously threatens life, health, or economic well-being, the director must request the Governor to order emergency measures to control the pests or diseases. The director's findings must contain an evaluation of the affect of the emergency measures on public health. The Governor may, after finding that such a danger exists within this state, order emergency measures to prevent or abate the infestation or disease. The measures may include, after a thorough evaluation of all other alternatives, the aerial application of pesticides.

Summary of Amended Bill:

Consultation & Assessment. The director of Agriculture must conduct certain consultations when the director proposes to eradicate Asian gypsy moth through the aerial application of pesticides within a large urban residential area. The director must consult with the Department of Health and appropriate federal agencies concerning unpublished

formulas of the products acquired to obtain an independent assessment of the possible human health risks associated with the proposed use. Such a "large urban residential area" is an area: lying within the boundaries of a city with a population of greater than 100,000; and an urban growth area contiguous to the city where residential uses are a permitted or a conditional use.

To assess the possible human health risks associated with the proposed pesticide use, the director must reveal to the consulted individuals the confidential statement of formula. The people consulted must consider anything that may bear on public health in making their assessment of the possible human health risks.

The director must make any independent assessment available to the public. However, the following must not be disclosed: the names, chemical abstract service numbers, or other identifying characteristics or percentages of inert ingredients in a pesticide, any other information the director believes should be confidential, and any information or documents used in preparation of an independent assessment that pertain to the confidential statement of formula and any protected trade secret information.

Public Notice. When the presence of Asian gypsy moth is detected within a large urban residential area by surveys and other measures, and the aerial application of pesticides is considered, the director must provide public notice of the survey results and the alternative measures for eradication. A public meeting must be held within the area. A comment period is provided.

Governor's Orders. New requirements are established regarding requests made by the director to the Governor to order emergency control measures. If the requested measures include the aerial application of pesticides in a large urban residential area for the eradication of Asian gypsy moths, the findings provided by the director must include: a summary of the information relied upon in determining the extent of the danger; the alternative measures considered; and the director's response to any public comments received following public notice.

Procedures for notifying the community in the application area before each such aerial application, including notification to those who have requested individual notice and to major employers and institutional facilities, including schools, child care facilities, senior residential and day care facilities, health care facilities, and community centers. For such an aerial application, the Department of Health, in consultation with the local health jurisdiction, must monitor public health effects following the implementation of the measures in the area.

Representatives of the silvicultural industry are added to the advisory committee that may be appointed to advise the Governor when the Governor is requested to issue an emergency orders for the control or plant pests or diseases. Threats to the silvicultural industry by such infestations are expressly added to the reasons such orders may be

issued. The Governor's orders may include the aerial application of pesticides only if such an aerial application is clearly the preferred alternative.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amendment changes who the director must consult with. It is the Department of Health (DOH) and appropriate federal agencies rather than appropriate public university personnel, and federal, state and local health agencies; requires the DOH, in consultation with the local health jurisdiction, to monitor public health effects following the application, rather than requiring the local health jurisdiction to do so with support from the DOH; and allows the Governor to approve any such aerial application if it is clearly the preferred alternative, rather than prohibiting the Governor from approving such an aerial application to a large urban residential area for Asian gypsy moth unless the Governor determines that all other alternatives are not feasible or likely to eradicate the pest.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (As passed Senate): (1) Last May, an aerial application was made in a portion of Seattle and the reaction of the community made it clear that we must do all we can to ensure public notification and participation in such a decision. The spraying raised fears in pregnant women and others in the area; a number left the area during the spraying. Asian gypsy moth must be controlled. It is a potentially badly damaging pest, but community notification and independent consultation and review are needed to help the public understand the risks. (2) The public involvement and notice required under the bill are the type of things the department needs to do to get citizen cooperation. (3) When the manufacturer has been asked whether its formula could be reviewed on consultation, the answer so far has been yes for expert review and no for public review. (4) A change in the law is needed for the department to consult with others.

(Concerns, as passed Senate): It is not clear that local health jurisdictions can absorb the costs associated with monitoring health effects following spraying.

Testimony Against: (As passed Senate) (1) Although the public outreach portions of the bill are laudable, the consultation provisions create problems. Registrants are very concerned about the potential that the formulae of their products could become public. Registering a modern, highly selective pesticide costs millions of dollars. Registrants will not risk the loss of their proprietary information; they will not register their products in

this state. (2) Some who would be consulted in public institutions have their own agendas and would love to be consulted so they can release to the public the proprietary information. If there is to be such consultation, there needs to be very serious penalties for revealing confidential information to the public. (3) A federal task force is examining the issue of inert ingredients. The state should not act until it is clear what changes will be made by the federal government in response to the task force. (4) The requirements in the bill are being requested only for activities in Seattle; the bill should apply only in Seattle. (5) The conditions established for issuing the Governor's order are biased against pesticides; the Governor should be able to pick the best option. After all, the active ingredient in the pesticide sprayed in Seattle was a product that is authorized for use in organic farming and most of the inert ingredients were vegetable oil and soap.

Testified: (In favor) Senator Kohl-Welles, prime sponsor; and Mary Beth Lang, Department of Agriculture.

(Concerns) Vicki Kirkpatrick, Washington State Association of Counties.

(Opposed) Heather Hansen, Friends of Farms and Forests; and Dan Coyne, Croplife America, and Far West Agribusiness.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Agriculture & Ecology. Signed by 18 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Cody, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, Mastin, McIntire, Pearson, Pflug, Ruderman, Schual-Berke, Talcott and Tokuda.

Minority Report: Do not pass. Signed by 7 members: Representatives Sehlin, Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cox and Lisk.

Staff: Jeff Olsen (786-7157).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Agriculture & Ecology:

The bill as amended by the Appropriations Committee would restrict the consultation required for certain aerial applications of pesticides to the Department of Health. The amended bill also identifies the circumstances where a consultation is required for a particular product. The amended bill also authorizes damages to be sought under the state's Uniform Trade Secrets Act for unauthorized release of an unpublished formula of a product under consultation. The amended bill removes the specific types of notification required when the director notifies a community before an aerial application of pesticides. The Department of Health is not required to monitor public health effects following an

aerial application of pesticides. The amended bill also removes the requirement that the Governor may approve an aerial application of pesticides in an emergency if the application is clearly the preferred alternative.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Discussions should continue to narrow the bill, in particular the language concerning the Governor's new standard for deciding to conduct an aerial spraying as a preferred alternative.

Testimony Against: None.

Testified: Dan Coyne, Croplife America, Responsible Industry for a Sound Environment.