

SENATE BILL REPORT

SB 5851

As Reported By Senate Committee On:
Agriculture & International Trade, February 28, 2001

Title: An act relating to authorizing the director of agriculture to consult with public entities on human health risks associated with any proposed pesticide use by the department.

Brief Description: Authorizing the director of agriculture to consult with public entities on human health risks associated with any proposed pesticide use by the department.

Sponsors: Senators Rasmussen and Franklin; by request of Department of Agriculture.

Brief History:

Committee Activity: Agriculture & International Trade: 2/23/01, 2/28/01 [DPS, DNP].

SENATE COMMITTEE ON AGRICULTURE & INTERNATIONAL TRADE

Majority Report: That Substitute Senate Bill No. 5851 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Snyder and Spanel.

Minority Report: Do not pass.

Signed by Senator Swecker.

Staff: Bob Lee (786-7404)

Background: Pesticides distributed in Washington State must be registered with the Department of Agriculture. These registrations are secondary to the federal registration of the product with the U.S. Environmental Protection Agency. Active ingredients in a pesticide are listed by name and percentage on the pesticide label. Any other ingredients, referred to as inert ingredients, are not listed on the label.

State law generally prohibits the director from disclosing to the public information that is considered a trade secret which includes unpublished complete statements of formula. A similar provision protects confidential business information from disclosure under federal law.

State law provides that if the director proposes to release for inspection information which the applicant believes is protected from disclosure, the director shall notify the applicant. The director is not to release the information for 30 days which provides time for the applicant to obtain a declaratory judgment as to whether the information can be disclosed.

Public concern has been expressed about the confidentiality of inert ingredients in pesticides and, as a result, the inability of the public to assess risk associated with inert ingredients. Most recently in Washington, the public raised concerns about the inert ingredients in the pesticides used by the department in its Asian Gypsy moth eradication project carried out in the Ballard/Magnolia area of Seattle in the spring of 2000.

Summary of Substitute Bill: When applying to the Department of Agriculture for the registration of a pesticide, the applicant must provide a listing of the active and inert ingredients, and the percentages of each ingredient. Each page containing this information may be submitted on company letterhead and marked as confidential– in red ink.

This information must be kept confidential and is exempt from disclosure as a public record. However, the department may consult with appropriate public university personnel, federal, state, and local health agencies concerning unpublished formulas to obtain an independent assessment of the possible human health risks associated with any proposed pesticide use by the department.

Consulted individuals must consider the confidential formula, the pesticide use, the impact on affected populations, and any public health considerations. Consulted individuals must store confidential information in a secure locked location and must return all information and notes to the director within 14 days after completing the assessment. Consulted individuals must not disclose the confidential formula and associated information.

The director must make available to the public any independent assessments, except that any names, chemical abstract service numbers, other identifying characteristics, percentages of inert ingredients in the pesticide, or other information marked as confidential shall not be disclosed.

This consultation process applies only to pesticide applications that are conducted to control or eradicate plant pests for which a quarantine has been declared, or are performed to control spartina and purple loosestrife.

A person who unlawfully discloses a confidential formula is subject to a fine of \$7,500 imposed by the director and is no longer eligible to serve as a consulted individual.

Substitute Bill Compared to Original Bill: Additional requirements were added to safeguard confidential information. The range of pesticide uses to which these consultation procedures apply have been specified.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Consultation with other health experts will increase the public's confidence that materials being used have been carefully assessed for possible health risks while not revealing companies' confidential information. Improvements are contained in the revised bill to better assure that confidential information is protected.

Testimony Against: Materials being used have already satisfied the requirements of the federal Environmental Protection Agency for the use that is allowed on the label. Some companies are sufficiently concerned about the potential of trade secrets not being protected that they may withhold materials from use by the Department of Agriculture. Since the

specific concern being addressed is with aerial applications in large metropolitan areas, the bill should be restricted to aerial applications in large cities.

Testified: Mary Beth Lange, Department of Agriculture (pro); Lynden Baum, Department of Health (pro); Heather Hanson, WA Friends of Farms and Forests (con); Dan Coyne, KISE, ACPA (con).