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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5425

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State of Washington 57th Legislature

2002 Regular Session

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

READ FIRST TIME 02/04/2002.

1 AN ACT Relating to aerial application of pesticides to control  
2 plant pests; amending RCW 17.24.007, 15.58.065, 17.24.171, and  
3 43.06.010; adding a new section to chapter 15.58 RCW; and adding a new  
4 section to chapter 17.24 RCW.

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

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

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

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

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

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

18 (4) "Plant pest" means a living stage of an insect, mite, nematode,  
19 slug, snail, or protozoa, or other invertebrate animal, bacteria,

1 fungus, or parasitic plant, or their reproductive parts, or viruses, or  
2 an organism similar to or allied with any of the foregoing plant pests,  
3 including a genetically engineered organism, or an infectious substance  
4 that can directly or indirectly injure or cause disease or damage in  
5 plants or parts of plants or in processed, manufactured, or other  
6 products of plants.

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

11 (6) "Certificate" or "certificate of inspection" means an official  
12 document certifying compliance with the requirements of this chapter.  
13 The term "certificate" includes labels, rubber stamp imprints, tags,  
14 permits, written statements, or a form of inspection and certification  
15 document that accompanies the movement of inspected and certified plant  
16 material and plant products, or bees, bee hives, or beekeeping  
17 equipment.

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

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

27 (9) "Genetically engineered organism" means an organism altered or  
28 produced through genetic modification from a donor, vector, or  
29 recipient organism using recombinant DNA techniques, excluding those  
30 organisms covered by the food, drug and cosmetic act (21 U.S.C. Secs.  
31 301-392).

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

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

38 (12) "Noxious weed" means a living stage, including, but not  
39 limited to, seeds and reproductive parts, of a parasitic or other plant

1 of a kind that presents a threat to Washington agriculture or  
2 environment.

3 (13) "Regulated article" means a plant or plant product, bees or  
4 beekeeping equipment, noxious weed or other articles or equipment  
5 capable of harboring or transporting plant or bee pests or noxious  
6 weeds that is specifically addressed in rules or quarantines adopted  
7 under this chapter.

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

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

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

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

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

25 (19) "Biological control agent" means a parasite, predator, or  
26 pathogen intentionally released, by humans, into a target host or prey  
27 population with the intent of causing population reduction of that host  
28 or prey.

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

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

38 (22) "Asian gypsy moth" means the Asian strain of the gypsy moth  
39 *Lymantria dispar*.

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

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

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

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

8       (2) Except under section 3 of this act and notwithstanding any  
9 other provision of this chapter or other law, the director shall not  
10 make public information which in the director's judgment should be  
11 privileged or confidential because it contains or relates to trade  
12 secrets or commercial or financial information except that, when  
13 necessary to carry out the provisions of this chapter, information  
14 relating to unpublished formulas of products acquired by authorization  
15 of this chapter may be revealed to any state or federal agency  
16 consulted and may be revealed at a public hearing or in findings of  
17 fact issued by the director when necessary under this chapter.

18       (3) Except under section 3 of this act, if the director proposes to  
19 release for inspection information which the applicant or registrant  
20 believes to be protected from disclosure under subsection (2) of this  
21 section, the director shall notify the applicant or registrant in  
22 writing, by certified mail. The director shall not thereafter make  
23 available for inspection such data until thirty days after receipt of  
24 the notice by the applicant or registrant. During this period, the  
25 applicant or registrant may institute an action in the superior court  
26 of Thurston county for a declaratory judgment as to whether such  
27 information is subject to protection under subsection (2) of this  
28 section.

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

31       (1) When the director proposes to eradicate the Asian gypsy moth  
32 through the aerial application of pesticides within a large urban  
33 residential area as defined in RCW 17.24.007, the director shall  
34 consult with appropriate public university personnel and federal,  
35 state, and local health agencies concerning unpublished formulas of  
36 products acquired by authorization of this chapter for the purpose of  
37 obtaining an independent assessment of the possible human health risks  
38 associated with the proposed use.

1 (2) The director shall reveal to consulted individuals the  
2 confidential statement of formula for the purpose of assessing the  
3 possible human health risks associated with the proposed pesticide use  
4 by the department.

5 (3) Consulted individuals shall consider the confidential statement  
6 of formula, the proposed pesticide use, the impact on affected  
7 populations, and any other considerations that may bear on public  
8 health in making an assessment of the possible human health risks.

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

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

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:

38 (a) The director shall implement procedures for notifying the  
39 community in the application area before each aerial application. The

1 procedures shall include notifying individuals who request individual  
2 notice, and include notice to major employers and institutional  
3 facilities, including but not limited to schools, child care  
4 facilities, senior residential and day care facilities, health care  
5 facilities, and community centers; and

6 (b) The local health jurisdiction, with support from the department  
7 of health, shall monitor public health effects following the  
8 implementation of the measures in such areas.

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

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

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

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

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

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

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

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

36 (6) The governor may require the attorney general or any  
37 prosecuting attorney to inquire into the affairs or management of any  
38 corporation existing under the laws of this state, or doing business in

1 this state, and report the same to the governor, or to any grand jury  
2 designated by the governor, or to the legislature when next in session;

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

5 (8) The governor may offer rewards, not exceeding one thousand  
6 dollars in each case, payable out of the state treasury, for  
7 information leading to the apprehension of any person convicted of a  
8 felony who has escaped from a state correctional institution or for  
9 information leading to the arrest of any person who has committed or is  
10 charged with the commission of a felony;

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

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

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

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

23 (13) The governor may, after finding that there exists within this  
24 state an imminent danger of infestation of plant pests as defined in  
25 RCW 17.24.007 or plant diseases which seriously endangers the  
26 agricultural, silvicultural, or horticultural industries of the state  
27 of Washington, or which seriously threatens life, health, or economic  
28 well-being, order emergency measures to prevent or abate the  
29 infestation or disease situation, which measures, after thorough  
30 evaluation of all other alternatives, may include the aerial  
31 application of pesticides. The governor shall not approve a proposed  
32 emergency measure that includes the aerial application of pesticides in  
33 a large urban residential area for Asian gypsy moth eradication unless  
34 the governor determines that all other alternatives are not feasible or  
35 likely to eradicate the pest;

36 (14) On all compacts forwarded to the governor pursuant to RCW  
37 9.46.360(6), the governor is authorized and empowered to execute on  
38 behalf of the state compacts with federally recognized Indian tribes in  
39 the state of Washington pursuant to the federal Indian Gaming



1 Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting class III  
2 gaming, as defined in the Act, on Indian lands.

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