
SENATE BILL 5425

State of Washington

57th Legislature

2001 Regular Session

By Senators Kohl-Welles, Jacobsen and Fraser

Read first time 01/22/2001. Referred to Committee on Environment,
Energy & Water.

1 AN ACT Relating to aerial application of pesticides to control
2 plant pests; amending RCW 17.24.007, 17.24.061, 17.24.171,
3 43.06.010, and 15.08.020; and adding new sections to chapter 17.24
4 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 17.24
7 RCW to read as follows:

8 The legislature finds that controlling and eradicating pests in
9 urban areas is a matter of statewide interest, including both to
10 the residents of urban areas in which pests are detected and to
11 the agricultural and other sectors of the state's economy that may
12 be affected by the spread of pests. Therefore all segments of the
13 interested public should have ample opportunity to be informed of
14 and to participate meaningfully in governmental programs for pest
15 detection, assessment of infestation threat, development of
16 alternatives to address the threat, and implementation of chosen
17 alternatives. Such information, notification, and participation is
18 important in ensuring the effectiveness of the program while

1 ensuring protection of public health and the public's trust and
2 confidence that the chosen alternatives will pose the least risk
3 to public health and the environment. Because the aerial
4 application of pesticides in densely populated urban residential
5 areas may expose a greater population, it is the purpose of this
6 act to direct the appropriate state and local agencies to
7 implement enhanced standards for public information, notification,
8 and participation in pest control activities involving such aerial
9 application of pesticides.

10 **Sec. 2.** RCW 17.24.007 and 2000 c 100 s 6 are each amended to read
11 as follows:

12 Unless the context clearly requires otherwise, the definitions
13 in this section apply throughout this chapter.

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

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

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

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

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

35 (6) "Certificate" or "certificate of inspection" means an
36 official document certifying compliance with the requirements of
37 this chapter. The term "certificate" includes labels, rubber stamp

1 imprints, tags, permits, written statements, or a form of
2 inspection and certification document that accompanies the
3 movement of inspected and certified plant material and plant
4 products, or bees, bee hives, or beekeeping equipment.

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

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

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

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

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

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

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

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

38 (15) "Nuisance" means a plant, or plant part, apiary, or

1 property found in a commercial area on which is found a pest,
2 pathogen, or disease that is a source of infestation to other
3 properties.

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

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

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

15 (19) "Biological control agent" means a parasite, predator, or
16 pathogen intentionally released, by humans, into a target host or
17 prey population with the intent of causing population reduction of
18 that host or prey.

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

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

29 **Sec. 3.** RCW 17.24.061 and 1991 c 257 s 10 are each amended to read
30 as follows:

31 (1) In submitting data required by this chapter, the applicant
32 may: (a) Mark clearly portions of data which in his or her opinion
33 are trade secrets or commercial or financial information; and (b)
34 submit the marked material separately from other material required
35 to be submitted under this chapter.

36 (2) Notwithstanding any other provision of this chapter (~~or~~
37 ~~other law~~)), the director shall not make information submitted by

1 an applicant or registrant under this chapter available to the
2 public if(~~(, in the judgment of the director,)~~) the information is
3 privileged or confidential because it contains or relates to trade
4 secrets or commercial or financial information. Where (~~necessary~~
5 ~~to~~) disclosure would carry out the provisions of this chapter and
6 further the purposes in RCW 17.24.003 and section 1 of this act,
7 information relating to unpublished formulas of products acquired
8 by authorization of this chapter may be revealed to any state or
9 federal agency consulted and may be revealed at a public hearing
10 or in findings of fact issued by the director.

11 (3) If the director proposes to release for inspection or to
12 reveal at a public hearing or in findings of fact issued by the
13 director, information that the applicant or registrant believes to
14 be protected from disclosure under subsection (2) of this section,
15 he or she shall notify the applicant or registrant in writing, by
16 certified mail. The director may not make this data available for
17 inspection nor reveal the information at a public hearing or in
18 findings of fact issued by the director until thirty days after
19 receipt of the notice by the applicant or registrant. During this
20 period, the applicant or registrant may withdraw the application
21 or may institute an action in the superior court of Thurston
22 county for a declaratory judgment as to whether the information is
23 subject to protection under subsection (2) of this section.

24 NEW SECTION. Sec. 4. A new section is added to chapter 17.24
25 RCW to read as follows:

26 When surveys and other measures, including necessary laboratory
27 confirmation of species type, detect the presence within a large
28 urban residential area of a pest of a type and in such numbers
29 that the aerial application of pesticides may be considered as a
30 measure to control or eradicate the pest, the director shall
31 provide public notice of the survey results. The director shall
32 choose from a variety of methods reasonably calculated to provide
33 notice to the public, including, at a minimum, posting the
34 affected area and notifying public and private groups with a known
35 interest in the type of proposal being considered. The notice shall
36 describe the procedures to be used to evaluate the magnitude of
37 the risk of infestation and the alternatives for control or

1 eradication measures if such measures are determined necessary. For
2 at least thirty days from the date of the notice, the director
3 shall accept and consider comments from the public on the survey
4 results, extent of risk of infestation, the need for control or
5 eradication measures, and recommendations for preferred measures.

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

8 (1) If the director determines that there exists an imminent
9 danger of an infestation of plant pests or plant diseases that
10 seriously endangers the agricultural or horticultural industries
11 of the state, or that seriously threatens life, health, or
12 economic well-being, the director shall request the governor to
13 order emergency measures to control the pests or plant diseases
14 under RCW 43.06.010(~~((14))~~) (13). The director's findings shall
15 contain an evaluation of the affect of the emergency measures on
16 public health, a summary of the information relied upon in
17 determining the extent of the danger, the alternative control
18 measures considered and the recommended measures, and, when
19 applicable, the director's response to the public comments
20 received upon the notice of detection in large urban residential
21 areas required under section 4 of this act.

22 (2) (~~((If an emergency is declared pursuant to RCW~~
23 ~~43.06.010(14), the director may appoint a committee to advise the~~
24 ~~governor through the director and to review emergency measures~~
25 ~~necessary under the authority of RCW 43.06.010(14) and this~~
26 ~~section and make subsequent recommendations))~~ The governor shall
27 appoint a committee to review the proposed emergency measures and
28 make recommendations to the governor. The committee shall include
29 representatives of the agricultural and silvicultural industries,
30 state and local government, public health interests, technical
31 service providers, and environmental organizations. When the
32 director proposes as an emergency measure the aerial application
33 of pesticides in a large urban residential area, the committee
34 shall include representatives of the local health jurisdiction as
35 well as the city or county government for the area, and
36 organizations representing residents of the area. The committee
37 shall undertake such review and provide such information and

1 recommendations in a timely manner as the governor directs.

2 (3) Upon the order of the governor of the use of emergency
3 measures, the director is authorized to implement the emergency
4 measures to prevent, control, or eradicate plant pests or plant
5 diseases that are the subject of the emergency order. Such
6 measures, after thorough evaluation of all other alternatives, may
7 include the aerial application of pesticides.

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

14 (5) The director shall continually evaluate the emergency
15 measures taken and report to the governor at intervals of not less
16 than ten days. When the measures include the aerial application of
17 pesticides in large urban residential areas, the director and the
18 local health jurisdiction shall cooperate in surveying public
19 health before, during, and following implementation of the
20 measures in such areas. The results of these surveys shall be made
21 available to the public. The director shall immediately advise
22 the governor if he or she finds that the emergency no longer
23 exists or if certain emergency measures should be discontinued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (13) The governor may, after (~~finding~~) considering the

1 recommendations of the advisory committee appointed under RCW
2 17.24.171(2), find that there exists within this state an imminent
3 danger of infestation of plant pests as defined in RCW 17.24.007
4 or plant diseases which seriously endangers the agricultural,
5 silvicultural, or horticultural industries of the state of
6 Washington, or which seriously threatens life, health, or economic
7 well-being((~~7~~)). Upon so finding, the governor may order emergency
8 measures to prevent or abate the infestation or disease
9 situation((~~7~~, which measures~~7~~)). After thorough evaluation of all
10 other alternatives, and determining that such alternatives are not
11 likely to prevent or abate the infestation or disease situation,
12 the governor may order emergency measures that include the aerial
13 application of pesticides;

14 (14) On all compacts forwarded to the governor pursuant to RCW
15 9.46.360(6), the governor is authorized and empowered to execute
16 on behalf of the state compacts with federally recognized Indian
17 tribes in the state of Washington pursuant to the federal Indian
18 Gaming Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting
19 class III gaming, as defined in the Act, on Indian lands.

20 **Sec. 7.** RCW 15.08.020 and 1961 c 11 s 15.08.020 are each amended
21 to read as follows:

22 The following methods shall be used for the prevention, control
23 or disinfection of pests and diseases:

24 (1) Bacterial diseases, removal and destruction of infected
25 plant or part thereof, care being used to disinfect removal tools
26 to prevent infection therefrom;

27 (2) Fungus diseases, spraying with effective fungicide;

28 (3) Chewing or sucking insect pests, spraying with effective
29 insecticide: PROVIDED, That when such spraying includes aerial
30 application in large urban residential areas, as defined in RCW
31 17.24.007(21), the requirements of RCW 17.24.171 and 43.06.010(13)
32 shall be met;

33 (4) Fungus insect pests, spraying with other effective
34 solutions or emulsions described in circulars issued by the
35 director.

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