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**SUBSTITUTE HOUSE BILL 1806**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** House Committee on Select Committee on Environmental Health (originally sponsored by Representatives Pedersen, Upthegrove, Campbell, Kenney, McDermott, Morrell, Chase, Appleton, Dunshee, McIntire, Santos, Moeller, Darneille, Roberts, Hudgins, Hunt, Hasegawa, Conway, O'Brien, Green, Rolfes, Simpson, Schual-Berke, Goodman, Wood and Lantz)

READ FIRST TIME 02/20/07.

1 AN ACT Relating to pesticide application in school facilities;  
2 amending RCW 17.21.020 and 17.21.150; adding new sections to chapter  
3 17.21 RCW; adding a new section to chapter 28A.300 RCW; and creating  
4 new sections.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that children are more  
7 vulnerable than adults to the hazardous effects of pesticides. The  
8 intent of this act is to limit, for the protection of students and  
9 staff, the use of high hazard pesticides in and on school facilities,  
10 to facilitate the use by school districts of nonchemical pest  
11 management strategies, and to minimize the use of chemical pesticides  
12 on school property. This will be accomplished in part through  
13 development and use of a model integrated pest management policy,  
14 continuing education in integrated pest management techniques for  
15 licensed applicators, and decision making that emphasizes use of  
16 nonchemical pest control measures and allows use of high hazard  
17 pesticides only as a last resort. High hazard pesticides include  
18 United States environmental protection agency toxicity categories I and  
19 II; and may include general categories of pesticides that are known or

1 probable carcinogens; known or probable endocrine disruptors; known to  
2 have chronic neurologic effects; known to cause birth defects,  
3 reproductive harm, or developmental harm; or are persistent in soil.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.300  
5 RCW to read as follows:

6 The office of the superintendent of public instruction, in  
7 consultation with the department of health and the department of  
8 agriculture, shall develop a model integrated pest management policy  
9 that emphasizes use of nonchemical pest control measures and allows use  
10 of high-hazard pesticides only as a last resort. The policy must be  
11 completed by March 1, 2008, and must be disseminated to all school  
12 districts and licensed day care centers. The office of the  
13 superintendent of public instruction shall review and, if appropriate,  
14 update the policy at least once every five years.

15 **Sec. 3.** RCW 17.21.020 and 2004 c 100 s 1 are each amended to read  
16 as follows:

17 Unless the context clearly requires otherwise, the definitions in  
18 this section apply throughout this chapter.

19 (1) "Agricultural commodity" means any plant or part of a plant, or  
20 animal, or animal product, produced by a person (including farmers,  
21 ranchers, vineyardists, plant propagators, Christmas tree growers,  
22 aquaculturists, floriculturists, orchardists, foresters, or other  
23 comparable persons) primarily for sale, consumption, propagation, or  
24 other use by people or animals.

25 (2) "Agricultural land" means land on which an agricultural  
26 commodity is produced or land that is in a government-recognized  
27 conservation reserve program. This definition does not apply to  
28 private gardens where agricultural commodities are produced for  
29 personal consumption.

30 (3) "Antimicrobial pesticide" means a pesticide that is used for  
31 the control of microbial pests, including but not limited to viruses,  
32 bacteria, algae, and protozoa, and is intended for use as a  
33 disinfectant or sanitizer.

34 (4) "Apparatus" means any type of ground, water, or aerial  
35 equipment, device, or contrivance using motorized, mechanical, or  
36 pressurized power and used to apply any pesticide on land and anything

1 that may be growing, habitating, or stored on or in such land, but  
2 shall not include any pressurized handsized household device used to  
3 apply any pesticide, or any equipment, device, or contrivance of which  
4 the person who is applying the pesticide is the source of power or  
5 energy in making such pesticide application, or any other small  
6 equipment, device, or contrivance that is transported in a piece of  
7 equipment licensed under this chapter as an apparatus.

8 (5) "Arthropod" means any invertebrate animal that belongs to the  
9 phylum arthropoda, which in addition to insects, includes allied  
10 classes whose members are wingless and usually have more than six legs;  
11 for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

12 (6) "Certified applicator" means any individual who is licensed as  
13 a commercial pesticide applicator, commercial pesticide operator,  
14 public operator, private-commercial applicator, demonstration and  
15 research applicator, private applicator, limited private applicator,  
16 rancher private applicator, or any other individual who is certified by  
17 the director to use or supervise the use of any pesticide which is  
18 classified by the EPA or the director as a restricted use pesticide.

19 (7) "Commercial pesticide applicator" means any person who engages  
20 in the business of applying pesticides to the land of another.

21 (8) "Commercial pesticide operator" means any employee of a  
22 commercial pesticide applicator who uses or supervises the use of any  
23 pesticide and who is required to be licensed under provisions of this  
24 chapter.

25 (9) "Defoliant" means any substance or mixture of substances  
26 intended to cause the leaves or foliage to drop from a plant with or  
27 without causing abscission.

28 (10) "Department" means the Washington state department of  
29 agriculture.

30 (11) "Desiccant" means any substance or mixture of substances  
31 intended to artificially accelerate the drying of plant tissues.

32 (12) "Device" means any instrument or contrivance intended to trap,  
33 destroy, control, repel, or mitigate pests, but not including equipment  
34 used for the application of pesticides when sold separately from the  
35 pesticides.

36 (13) "Direct supervision" by certified private applicators shall  
37 mean that the designated restricted use pesticide shall be applied for  
38 purposes of producing any agricultural commodity on land owned or

1 rented by the applicator or the applicator's employer, by a competent  
2 person acting under the instructions and control of a certified private  
3 applicator who is available if and when needed, even though such  
4 certified private applicator is not physically present at the time and  
5 place the pesticide is applied. The certified private applicator shall  
6 have direct management responsibility and familiarity of the pesticide,  
7 manner of application, pest, and land to which the pesticide is being  
8 applied. Direct supervision by all other certified applicators means  
9 direct on-the-job supervision and shall require that the certified  
10 applicator be physically present at the application site and that the  
11 person making the application be in voice and visual contact with the  
12 certified applicator at all times during the application. However,  
13 direct supervision for forest application does not require constant  
14 voice and visual contact when general use pesticides are applied using  
15 nonapparatus type equipment, the certified applicator is physically  
16 present and readily available in the immediate application area, and  
17 the certified applicator directly observes pesticide mixing and  
18 batching. Direct supervision of an aerial apparatus means the pilot of  
19 the aircraft must be appropriately certified.

20 (14) "Director" means the director of the department or a duly  
21 authorized representative.

22 (15) "Engage in business" means any application of pesticides by  
23 any person upon lands or crops of another.

24 (16) "EPA" means the United States environmental protection agency.

25 (17) "EPA restricted use pesticide" means any pesticide classified  
26 for restricted use by the administrator, EPA.

27 (18) "FIFRA" means the federal insecticide, fungicide and  
28 rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

29 (19) "Forest application" means the application of pesticides to  
30 agricultural land used to grow trees for the commercial production of  
31 wood or wood fiber for products such as dimensional lumber, shakes,  
32 plywood, poles, posts, pilings, particle board, hardboard, oriented  
33 strand board, pulp, paper, cardboard, or other similar products.

34 (20) "Fumigant" means any pesticide product or combination of  
35 products that is a vapor or gas or forms a vapor or gas on application  
36 and whose method of pesticidal action is through the gaseous state.

37 (21) "Fungi" means all nonchlorophyll-bearing thallophytes (all

1 nonchlorophyll-bearing plants of lower order than mosses and  
2 liverworts); for example, rusts, smuts, mildews, molds, and yeasts,  
3 except those on or in a living person or other animals.

4 (22) "Fungicide" means any substance or mixture of substances  
5 intended to prevent, destroy, repel, or mitigate any fungi.

6 (23) "Herbicide" means any substance or mixture of substances  
7 intended to prevent, destroy, repel, or mitigate any weed or other  
8 higher plant.

9 (24) "High hazard pesticide" means a pesticide product on the list  
10 adopted under section 5 of this act.

11 (25) "Immediate service call" means a landscape application to  
12 satisfy an emergency customer request for service, or a treatment to  
13 control a pest to landscape plants.

14 ((+25+)) (26) "Insect" means any small invertebrate animal, in any  
15 life stage, whose adult form is segmented and which generally belongs  
16 to the class insecta, comprised of six-legged, usually winged forms,  
17 as, for example, beetles, bugs, bees, and flies. The term insect shall  
18 also apply to other allied classes of arthropods whose members are  
19 wingless and usually have more than six legs, for example, spiders,  
20 mites, ticks, centipedes, and isopod crustaceans.

21 ((+26+)) (27) "Insecticide" means any substance or mixture of  
22 substances intended to prevent, destroy, repel, or mitigate any insect.

23 ((+27+)) (28) "Land" means all land and water areas, including  
24 airspace and all plants, animals, structures, buildings, devices, and  
25 contrivances, appurtenant to or situated on, fixed or mobile, including  
26 any used for transportation.

27 ((+28+)) (29) "Landscape application" means an application of any  
28 EPA registered pesticide to any exterior landscape area around  
29 residential property, commercial properties such as apartments or  
30 shopping centers, parks, golf courses, schools including nursery  
31 schools and licensed day cares, or cemeteries or similar areas. This  
32 definition shall not apply to: (a) Applications made by private  
33 applicators, limited private applicators, or rancher private  
34 applicators; (b) mosquito abatement, gypsy moth eradication, or similar  
35 wide-area pest control programs sponsored by governmental entities; and  
36 (c) commercial pesticide applicators making structural applications.

37 ((+29+)) (30) "Limited private applicator" means a certified  
38 applicator who uses or is in direct supervision, as defined for private

1 applicators in this section, of the use of any herbicide classified by  
2 the EPA or the director as a restricted use pesticide, for the sole  
3 purpose of controlling weeds on nonproduction agricultural land owned  
4 or rented by the applicator or the applicator's employer. Limited  
5 private applicators may also use restricted use pesticides on timber  
6 areas, excluding aquatic sites, to control weeds designated for  
7 mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state  
8 and local regulations adopted under chapters 17.04, 17.06, and 17.10  
9 RCW. A limited private applicator may apply restricted use herbicides  
10 to the types of land described in this subsection of another person if  
11 applied without compensation other than trading of personal services  
12 between the applicator and the other person. This license is only  
13 valid when making applications in counties of Washington located east  
14 of the crest of the Cascade mountains.

15 ~~((+30+))~~ (31) "Limited production agricultural land" means land  
16 used to grow hay and grain crops that are consumed by the livestock on  
17 the farm where produced. No more than ten percent of the hay and grain  
18 crops grown on limited production agricultural land may be sold each  
19 crop year. Limited production agricultural land does not include  
20 aquatic sites.

21 ~~((+31+))~~ (32) "Nematocide" means any substance or mixture of  
22 substances intended to prevent, destroy, repel, or mitigate nematodes.

23 ~~((+32+))~~ (33) "Nematode" means any invertebrate animal of the  
24 phylum nemathelminthes and class nematoda, that is, unsegmented round  
25 worms with elongated, fusiform, or saclike bodies covered with cuticle,  
26 and inhabiting soil, water, plants or plant parts. Nematodes may also  
27 be called nemas or eelworms.

28 ~~((+33+))~~ (34) "Nonproduction agricultural land" means pastures,  
29 rangeland, fencerows, and areas around farm buildings but not aquatic  
30 sites.

31 ~~((+34+))~~ (35) "Person" means any individual, partnership,  
32 association, corporation, or organized group of persons whether or not  
33 incorporated.

34 ~~((+35+))~~ (36) "Pest" means, but is not limited to, any insect,  
35 rodent, nematode, snail, slug, weed, and any form of plant or animal  
36 life or virus, except virus, bacteria, or other microorganisms on or in  
37 a living person or other animal or in or on processed food or beverages

1 or pharmaceuticals, which is normally considered to be a pest, or which  
2 the director may declare to be a pest.

3 ~~((+36+))~~ (37) "Pesticide" means, but is not limited to:

4 (a) Any substance or mixture of substances intended to prevent,  
5 destroy, control, repel, or mitigate any pest;

6 (b) Any substance or mixture of substances intended to be used as  
7 a plant regulator, defoliant or desiccant; and

8 (c) Any spray adjuvant as defined in RCW 15.58.030.

9 ~~((+37+))~~ (38) "Pesticide advisory board" means the pesticide  
10 advisory board as provided for in this chapter.

11 ~~((+38+))~~ (39) "Plant regulator" means any substance or mixture of  
12 substances intended through physiological action, to accelerate or  
13 retard the rate of growth or maturation, or to otherwise alter the  
14 behavior of ornamental or crop plants or their produce, but shall not  
15 include substances insofar as they are intended to be used as plant  
16 nutrients, trace elements, nutritional chemicals, plant inoculants, or  
17 soil amendments.

18 ~~((+39+))~~ (40) "Private applicator" means a certified applicator who  
19 uses or is in direct supervision of the use of any pesticide classified  
20 by the EPA or the director as a restricted use pesticide, for the  
21 purposes of producing any agricultural commodity and for any associated  
22 noncrop application on land owned or rented by the applicator or the  
23 applicator's employer or if applied without compensation other than  
24 trading of personal services between producers of agricultural  
25 commodities on the land of another person.

26 ~~((+40+))~~ (41) "Private-commercial applicator" means a certified  
27 applicator who uses or supervises the use of any pesticide classified  
28 by the EPA or the director as a restricted use pesticide for purposes  
29 other than the production of any agricultural commodity on lands owned  
30 or rented by the applicator or the applicator's employer.

31 ~~((+41+))~~ (42) "Rancher private applicator" means a certified  
32 applicator who uses or is in direct supervision, as defined for private  
33 applicators in this section, of the use of any herbicide or any  
34 rodenticide classified by the EPA or the director as a restricted use  
35 pesticide for the purpose of controlling weeds and pest animals on  
36 nonproduction agricultural land and limited production agricultural  
37 land owned or rented by the applicator or the applicator's employer.  
38 Rancher private applicators may also use restricted use pesticides on

1 timber areas, excluding aquatic sites, to control weeds designated for  
2 mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state  
3 and local regulations adopted under chapters 17.04, 17.06, and 17.10  
4 RCW. A rancher private applicator may apply restricted use herbicides  
5 and rodenticides to the types of land described in this subsection of  
6 another person if applied without compensation other than trading of  
7 personal services between the applicator and the other person. This  
8 license is only valid when making applications in counties of  
9 Washington located east of the crest of the Cascade mountains.

10 ~~((42))~~ (43) "Residential property" includes property less than  
11 one acre in size zoned as residential by a city, town, or county, but  
12 does not include property zoned as agricultural or agricultural  
13 homesites.

14 ~~((43))~~ (44) "Restricted use pesticide" means any pesticide or  
15 device which, when used as directed or in accordance with a widespread  
16 and commonly recognized practice, the director determines, subsequent  
17 to a hearing, requires additional restrictions for that use to prevent  
18 unreasonable adverse effects on the environment including people,  
19 lands, beneficial insects, animals, crops, and wildlife, other than  
20 pests.

21 ~~((44))~~ (45) "Rodenticide" means any substance or mixture of  
22 substances intended to prevent, destroy, repel, or mitigate rodents, or  
23 any other vertebrate animal which the director may declare by rule to  
24 be a pest.

25 ~~((45))~~ (46) "School facility" means any facility used for  
26 licensed day care center purposes or for the purposes of a public  
27 kindergarten or public elementary or secondary school. School facility  
28 includes the buildings or structures, playgrounds, landscape areas,  
29 athletic fields, school vehicles, or any other area of school property.

30 ~~((46))~~ (47) "Single-use waiver" means an approval for a single  
31 application of a pesticide at a single location of a school facility.  
32 It does not mean multiple applications of one chemical or multiple  
33 applications at more than one location.

34 (48) "Snails or slugs" include all harmful mollusks.

35 ~~((47))~~ (49) "Unreasonable adverse effects on the environment"  
36 means any unreasonable risk to people or the environment taking into  
37 account the economic, social, and environmental costs and benefits of  
38 the use of any pesticide, or as otherwise determined by the director.



1       (~~(48)~~) (50) "Weed" means any plant which grows where it is not  
2 wanted.

3       NEW SECTION. **Sec. 4.** A new section is added to chapter 17.21 RCW  
4 to read as follows:

5       (1) Except as provided in subsection (2) or (3) of this section, no  
6 person may apply a high hazard pesticide at a school facility.

7       (2) The director of a licensed day care center or the principal of  
8 a school may authorize for his or her facility a single-use waiver from  
9 the prohibition provided by subsection (1) of this section. The waiver  
10 may be authorized only if all of the following conditions are met:

11       (a) The director or principal determines that an immediate human  
12 health or safety hazard exists at his or her facility that warrants the  
13 use of a high hazard pesticide;

14       (b) Nonchemical or least-toxic pest prevention and control measures  
15 have been used unsuccessfully;

16       (c) The underlying causes of the pest outbreak will also be  
17 addressed by other actions to prevent future outbreaks; and

18       (d) Students or staff other than those making the application are  
19 not in the area at the time of application or for forty-eight hours  
20 following the application.

21       (3) This section does not limit the authority of a county health  
22 officer, state agency, mosquito control district, or noxious weed  
23 control board that is responsible for pest management decisions  
24 regarding school facilities to make decisions and take actions  
25 regarding those facilities.

26       (4) This section does not limit the authority of the director of a  
27 licensed day care center or the officers of a school district to  
28 establish pesticide application policies that are more restrictive than  
29 the policy provided by subsection (1) of this section.

30       NEW SECTION. **Sec. 5.** A new section is added to chapter 17.21 RCW  
31 to read as follows:

32       (1) The state board of health shall adopt by rule a list of  
33 products that the board considers to pose a high hazard to the health  
34 of children or staff if applied in or on school facilities.

35       (2) In developing the list, the board shall include products that  
36 meet the criteria of toxicity category I or toxicity category II for

1 pesticides as defined by the United States environmental protection  
2 agency in 40 C.F.R. Sec. 156.62 as it exists on the effective date of  
3 this section.

4 (3) The state board of health shall consider including in the list  
5 the following general categories of pesticides: Known or probable  
6 carcinogens; known or probable endocrine disruptors; pesticides known  
7 to have chronic neurologic effects; pesticides known to cause birth  
8 defects, reproductive harm, or developmental harm; or pesticides that  
9 are persistent in soil.

10 (4) The state board of health shall review and update the list  
11 developed under this section at least every five years, and may amend  
12 the rules it adopts under this section.

13 **Sec. 6.** RCW 17.21.150 and 1994 c 283 s 18 are each amended to read  
14 as follows:

15 A person who has committed any of the following acts is declared to  
16 be in violation of this chapter:

17 (1) Made false or fraudulent claims through any media,  
18 misrepresenting the effect of materials or methods to be utilized;

19 (2) Applied worthless or improper pesticides;

20 (3) Operated a faulty or unsafe apparatus;

21 (4) Operated in a faulty, careless, or negligent manner;

22 (5) Refused or neglected to comply with the provisions of this  
23 chapter, the rules adopted hereunder, or of any lawful order of the  
24 director including a final order of the director directing payment of  
25 a civil penalty. In an adjudicative proceeding arising from the  
26 department's denial of a license for failure to pay a civil penalty the  
27 subject shall be limited to whether the payment was made and the  
28 proceeding may not be used to collaterally attack the final order;

29 (6) Refused or neglected to keep and maintain the pesticide  
30 application records required by rule, or to make reports when and as  
31 required;

32 (7) Made false or fraudulent records, invoices, or reports;

33 (8) Acted as a certified applicator without having provided direct  
34 supervision to an unlicensed person as defined in RCW 17.21.020(~~(+12)~~)  
35 (13);

36 (9) Operated an unlicensed apparatus or an apparatus without a  
37 license plate issued for that particular apparatus;

1 (10) Used fraud or misrepresentation in making an application for  
2 a license or renewal of a license;

3 (11) Is not qualified to perform the type of pest control under the  
4 conditions and in the locality in which he or she operates or has  
5 operated, regardless of whether or not he or she has previously passed  
6 a pesticide license examination;

7 (12) Aided or abetted a licensed or an unlicensed person to evade  
8 the provisions of this chapter, combined or conspired with such a  
9 licensed or an unlicensed person to evade the provisions of this  
10 chapter, or allowed one's license to be used by an unlicensed person;

11 (13) Knowingly made false, misleading or erroneous statements or  
12 reports during or after an inspection concerning any infestation or  
13 infection of pests found on land or in connection with any pesticide  
14 complaint or investigation;

15 (14) Impersonated any state, county or city inspector or official;

16 (15) Applied a restricted use pesticide without having a certified  
17 applicator in direct supervision;

18 (16) Operated a commercial pesticide application business: (a)  
19 Without an individual licensed as a commercial pesticide applicator or  
20 (b) with a licensed commercial pesticide applicator not licensed in the  
21 classification or classifications in which the business operates;  
22 ((or))

23 (17) Operated as a commercial pesticide applicator without meeting  
24 the financial responsibility requirements including not having a  
25 properly executed financial responsibility insurance certificate or  
26 surety bond form on file with the department; or

27 (18) Applied a pesticide in violation of section 4 of this act.

28 NEW SECTION. Sec. 7. Sections 1, 2, 4, and 5 of this act may be  
29 known and cited as the healthy schools act of 2007.

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