

SENATE BILL REPORT

E2SSB 6518

As Amended by House, March 5, 2020

Title: An act relating to reducing prenatal exposure and harm to children by limiting environmental exposure to certain pesticides.

Brief Description: Reducing prenatal exposure and harm to children by limiting environmental exposure to certain pesticides.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Rolfes, Van De Wege and Wilson, C.).

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/30/20, 2/06/20 [DPS-WM, DNP].

Ways & Means: 2/10/20, 2/11/20 [DP2S, w/oRec, DNP].

Floor Activity:

Passed Senate: 2/17/20, 30-18.

Passed House: 3/05/20, 88-9.

Brief Summary of Engrossed Second Substitute Bill

- Prohibits a person from using pesticide that contains the active ingredient chlorpyrifos in Washington, except under certain circumstances.
- Allows the Department of Agriculture (WSDA) to grant an emergency temporary permit authorizing the use or application of a pesticide containing chlorpyrifos under certain conditions.
- Requires the Department of Health to establish and provide a recommendation to the state board of health for a statewide maximum contaminant level for group A water systems for chlorpyrifos by January 1, 2022.
- Requires the Department of Ecology to develop water quality standards by January 1, 2022, sufficient to protect salmon and other aquatic life from adverse impacts of chlorpyrifos and ensure chlorpyrifos pollution of surface water will not impact groundwater.
- Establishes that a pesticide containing chlorpyrifos may be used on certain crops and in certain circumstances until WSDA determines that a reasonable and less toxic alternative is available.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 6518 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; McCoy and Rolfes.

Minority Report: Do not pass.

Signed by Senators Warnick, Ranking Member; Honeyford and Short.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6518 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Pedersen and Van De Wege.

Minority Report: That it be referred without recommendation.

Signed by Senator Rivers.

Minority Report: Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Muzzall, Schoesler, Wagoner, Warnick and Wilson, L..

Staff: Jed Herman (786-7346)

Background: WSDA administers the federal Insecticide, Fungicide, and Rodenticide Act, as well as the state Pesticide Control Act and the state Pesticide Application Act. Its activities include adopting rules requiring the registration and restricted use of pesticides, testing and certifying pesticide applicators, issuing handler and worker pesticide training documentation, and providing technical assistance to pesticide applicators and workers.

Chlorpyrifos is an organophosphate pesticide used in agricultural, non-agricultural, and residential areas to control insects. It is used to kill a number of pests on crops such as fruit trees, corn, cranberries, grapes, mint, onion and wheat, as well as at turf farms, golf courses, and greenhouses.

Since 1965, chlorpyrifos has been registered with the United States Environmental Protection Agency (EPA) for use in agricultural and non-agricultural areas. It may be applied by both ground and aerial equipment. In November 2016, EPA revised its human health risk assessment and drinking water exposure assessment for chlorpyrifos. The revised analysis shows risks from dietary exposure and drinking water. EPA plans to continue to review the science addressing neurodevelopmental effects and complete its assessment by October 1, 2022.

Summary of Engrossed Second Substitute Bill: Beginning January 1, 2022, it is unlawful for a person to use a pesticide that contains the active ingredient chlorpyrifos in Washington, except that:

- WSDA may grant an emergency temporary permit authorizing the use or application of a pesticide containing chlorpyrifos, upon request by an agricultural commission, association, organization, or researcher who can demonstrate an emergency exists within a specific crop or crop grouping; and
- a pesticide containing chlorpyrifos may be used on sweet corn; mint; onion; Christmas trees; alfalfa, including seed and hay; asparagus; brassicas, including for seed and food production; and nonfood and nonfeed uses until WSDA determines that a reasonable and less toxic alternative is available.

WSDA must conduct emergency rule making to define and establish an emergency permit program by December 31, 2021. The conditions for an emergency temporary permit must, at a minimum, include:

- prohibiting aerial spraying;
- establishing a buffer zone from any sensitive area, including residences that house people, schools, nursing homes, day cares, and hospitals, of at least 250 feet or a smaller buffer established by rule using best available technology and best management practices that extends outward from the perimeter of the application block; and
- providing notice of the application to the nearby community and pesticide applicators' families at least 48 hours in advance of the application that includes targeted outreach in all languages spoken or used by all adjacent homes, businesses, and neighbors on all sides and to pesticide applicators' or handlers' families; a copy of the label consistent with federal law, safety data sheets, and who to contact in an emergency; and information about the adverse health effects, including acute and chronic health effects, that may occur due to childhood and prenatal exposure.

The Department of Health (DOH) must establish and provide a recommendation to the state Board of Health (BOH) for a statewide maximum contaminant level for group A water systems for chlorpyrifos by January 1, 2022. By January 1, 2022, BOH must adopt rules to implement the recommendations for maximum contaminant levels for chlorpyrifos in group A water systems. Until the maximum contaminant level has been determined, DOH must recommend to BOH a guidance value of chlorpyrifos for drinking water systems and, if exceeded, the group A water system must provide notice to consumers. The Department of Ecology must develop water quality standards by January 1, 2022, sufficient to protect salmon and other aquatic life from adverse impacts of chlorpyrifos and ensure chlorpyrifos pollution of surface water will not impact groundwater.

The prohibition on the use of chlorpyrifos must remain in effect unless WSDA adopts specific control measures for chlorpyrifos by rule that are designed to reduce emissions sufficiently so the public is not subject to levels of exposure that may cause or contribute to significant adverse health effects. The Washington State Commission on Pesticide Registration must work with agricultural grower groups and presently using chlorpyrifos to research alternative pest control strategies. Additional funding must be provided to WSDA for training and enforcement of the Washington Pesticide Control Act.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Proposed Substitute (Agriculture, Water, Natural Resources & Parks): *The committee recommended a different version of the bill than what was heard.* PRO: This bill will restrict the use of the toxic chemical chlorpyrifos in Washington State. The use of this product was banned 20 years ago in our homes because exposure to it, even in small doses, is dangerous to the neurological development of infants and small children. Chlorpyrifos can be found as residue on the fruit and vegetables that we eat and can be found in the air that we breathe. This pesticide was banned in the European Union last month and a number of states have already put in place phase outs, including California, New York, and Hawaii. This bill will reduce the public exposure to chlorpyrifos in our food and environment and will allow time for the pesticide industry and the farming community to develop alternatives.

CON: The application of chlorpyrifos is made by people trained in drift abatement while the trees are sleeping so the buds are closed and there is no fruit on the trees. Having this pesticide in their toolbox gives them a product that can eliminate pests in a single application. When conventional farmers have low pesticide levels, it allows neighbors to continue to grow organic fruit. EPA is currently reviewing the product and the results will be available in 2022, giving conventional growers two more years to use this product. Letting scientific research conducted by EPA determine whether this product is safe or not makes sense.

Farmers are not going to use pesticides in any type of wind as they want to be as precise as possible and use the best practices available. Farmers do not like spraying pesticides because it costs money. If growers can act the minute that they find the virus, they could use less product and prevent further spreading. There is concern that once a pesticide is banned for one farmer and one crop, it becomes easier to take it away from other farmers and other crops. Farmers follow the label on pesticides and work hard to ensure worker safety, including maintaining a record of all applications. Farmers have refresher courses on a yearly basis to maintain worker protection standards. Farmers ensure that proper protective clothing is worn and provide testing for all workers who may be exposed to or work with chlorpyrifos. For every field that is sprayed with chlorpyrifos, the farmer must notify every employee orally, post in the employee room, and post signage at the field.

The average time for an alternative to be developed, approved, and put in place is approximately 11 years. These restrictions will continue to make it more difficult for farmers to grow food to feed the increasing population on a limited number of acres. There is concern with the precedent of having a legislative decision supplant a scientific one. Chlorpyrifos is authorized for use in 79 countries including the U.S. Certain types of seed crops have very few tools and if they do not have chlorpyrifos as a tool, it could affect the

availability of some of those vegetables nationwide. The use of alternatives could impact the export market because a grower can only use a product that the export country accepts.

OTHER: Chlorpyrifos is a very dangerous chemical, that is acutely toxic, and is responsible for poisonings every year. Extensive studies and many peer reviewed scientific articles show that chlorpyrifos damages children's brains, reduces IQ points on average two points, and causes autism and attention deficit disorder. There are concerns that the bill does not go far enough as chlorpyrifos is a potent toxin that hurts people's brains permanently, especially kids. This is a race equity issue as farm workers are predominately people of color and farm worker families are particularly at risk because there is no safe way to handle this pesticide as a worker. Between January 2015 and December 2018, Washington had 23 pesticide investigations that involved 32 individuals sickened by chlorpyrifos and two of the illness cases involved women who were pregnant and three cases involves children. The additional year will allow for the majority of the product already in the hands of growers and being stored on shelves in the state to be legally and safely used before the ban is enacted. This will help to prevent illegal disposal or dumping of a new stocks and it will also lessen the amount of chlorpyrifos entering the hazardous waste disposal channels.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Senator Christine Rolfes, Prime Sponsor; Kimberly Abbey, League of Women Voters; Nick Federici, Toxic Free Future.

CON: Brad Tower, Washington Christmas Tree Growers Association; Jim Jesernig, Washington Potato and Onion Association; Ben Buchholz, Far West Agribusiness Association; Flor Maldonado, M&A Orchards, Tree Fruit Association; David Epstein, Vice President of Scientific Affairs for NW Horticultural Council; April Clayton, Red Apple Orchards, Washington Farm Bureau; Brad Haberman, Double H J Farm; Gary Christensen, L&G Christensen Farms; Brock Leonard, Sun Heaven Farms; Heather Hansen, Washington Friends of Farms and Forests; Charlie Brown, Washington Asparagus Commission; Peter Godlewski, Association of Washington Business; Gavin Morse, Gem Air Inc.

OTHER: Marty Cohen, University of Washington Department of Environmental and Occupational Health Sciences; Kelly McLain, Washington State Department of Agriculture; Lauren Jenks, Washington Department of Health; Andrea Schmitt, Columbia Legal Services; Patti Goldman, Earthjustice and United Farm Workers.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* CON: We are unable to find an effective alternative for chlorpyrifos, therefore a ban on the chemical will disrupt our business. EPA has an update coming out this summer, therefore this legislation should wait. The EPA office runs a scientific and transparent process, we should wait to see the conclusions of their review. Increased enforcement and training is preferred rather than an outright ban.

Persons Testifying (Ways & Means): CON: David Ducharme, Washington State Tree Fruit Association; Heather Hansen, Washington Friends of Farms and Forests.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Removes intent language that addresses impacts of chlorpyrifos to salmon and removes certain intent language addressing impacts of chlorpyrifos to children and pregnant women and replaces it with language that recognizes the margin of safety required by the federal Food Quality Protection Act to protect infants and children.
- Removes the prohibition, exemptions, and conditions where chlorpyrifos may be used, and instead requires WSDA to adopt emergency rules that include specific control measures for chlorpyrifos. Adopted rules must take effect by January 1, 2022, and must be designed to reduce emissions sufficiently so the public is not subject to levels of exposure that may cause or contribute to adverse health effects.
- Removes the requirement that Ecology develop water quality standards related to chlorpyrifos.
- Removes the requirement that the BOH develop and adopt maximum contaminant levels for chlorpyrifos in Group A water systems.