
SECOND SUBSTITUTE SENATE BILL 5425

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 new sections to chapter 17.24 RCW; and adding a new
4 section to chapter 15.58 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 RCW
7 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 the
10 residents of urban areas in which pests are detected and to the
11 agricultural and other sectors of the state's economy that may be
12 affected by the spread of pests. Therefore all segments of the
13 interested public should have ample opportunity to be informed of and
14 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 are
18 important in ensuring the effectiveness of the program while ensuring
19 protection of public health and the public's trust and confidence that

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

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

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

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

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

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

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

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

32 (6) "Certificate" or "certificate of inspection" means an official
33 document certifying compliance with the requirements of this chapter.
34 The term "certificate" includes labels, rubber stamp imprints, tags,
35 permits, written statements, or a form of inspection and certification
36 document that accompanies the movement of inspected and certified plant
37 material and plant products, or bees, bee hives, or beekeeping
38 equipment.

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

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

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

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

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

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

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

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

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

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

38 (17) "Bee pests" means a mite, other parasite, or disease that
39 causes injury to bees and those honey bees generally recognized to have

1 undesirable behavioral characteristics such as or as found in
2 Africanized honey bees.

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

8 (19) "Biological control agent" means a parasite, predator, or
9 pathogen intentionally released, by humans, into a target host or prey
10 population with the intent of causing population reduction of that host
11 or prey.

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

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

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

23 **Sec. 3.** RCW 15.58.065 and 1989 c 380 s 5 are each amended to read
24 as follows:

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

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

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

30 (2) Except under section 4 of this act and notwithstanding any
31 other provision of this chapter or other law, the director shall not
32 make public information which in the director's judgment should be
33 privileged or confidential because it contains or relates to trade
34 secrets or commercial or financial information except that, when
35 necessary to carry out the provisions of this chapter, information
36 relating to unpublished formulas of products acquired by authorization
37 of this chapter may be revealed to any state or federal agency

1 consulted and may be revealed at a public hearing or in findings of
2 fact issued by the director when necessary under this chapter.

3 (3) Except under section 4 of this act, if the director proposes to
4 release for inspection information which the applicant or registrant
5 believes to be protected from disclosure under subsection (2) of this
6 section, the director shall notify the applicant or registrant in
7 writing, by certified mail. The director shall not thereafter make
8 available for inspection such data until thirty days after receipt of
9 the notice by the applicant or registrant. During this period, the
10 applicant or registrant may institute an action in the superior court
11 of Thurston county for a declaratory judgment as to whether such
12 information is subject to protection under subsection (2) of this
13 section.

14 NEW SECTION. Sec. 4. A new section is added to chapter 15.58 RCW,
15 to be codified between RCW 15.58.065 and 15.58.070, to read as follows:

16 (1) When the director proposes to control the Asian gypsy moth
17 through the aerial application of pesticides within a large urban
18 residential area as defined in RCW 17.24.007, the director shall
19 consult with appropriate public university personnel and federal,
20 state, and local health agencies concerning unpublished formulas of
21 products acquired by authorization of this chapter for the purpose of
22 obtaining an independent assessment of the possible human health risks
23 associated with the proposed use.

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

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

32 (4) The director shall make any independent assessment available to
33 the public except that the names, chemical abstract service numbers, or
34 other identifying characteristics or percentages of inert ingredients
35 in a pesticide, and any other information marked as confidential by the
36 registrant, shall not be disclosed. Additionally, any information or
37 documents used in preparation of an independent assessment that pertain

1 to the confidential statement of formula and any protected trade secret
2 information shall not be disclosed to the public by any person.

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

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 17.24 RCW
8 to read as follows:

9 When surveys and other measures, including necessary laboratory
10 confirmation of species type, detect the presence within a large urban
11 residential area of the Asian gypsy moth in such numbers that the
12 aerial application of pesticides may be considered as a measure to
13 control or eradicate the pest, the director shall provide public notice
14 of the survey results. The director shall choose from a variety of
15 methods reasonably calculated to provide notice to the public,
16 including, at a minimum, notifying public and private groups with a
17 known interest in the type of proposal being considered. The notice
18 shall describe the procedures used to evaluate the magnitude of the
19 risk of infestation and the alternatives for control or eradication
20 measures if such measures are determined necessary. The director shall
21 hold a public meeting within the area to provide information and to
22 receive comments from the public on the survey results, extent of risk
23 of infestation, the need for control or eradication measures, and
24 recommendations for preferred measures. The director shall accept and
25 consider such comments for a period of thirty days from the date the
26 notice is provided, or a lesser period as the director determines if
27 immediate action is required to implement eradication measures.

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

30 (1) If the director determines that there exists an imminent danger
31 of an infestation of plant pests or plant diseases that seriously
32 endangers the agricultural or horticultural industries of the state, or
33 that seriously threatens life, health, or economic well-being, the
34 director shall request the governor to order emergency measures to
35 control the pests or plant diseases under RCW 43.06.010(~~(+14)~~) (13).
36 The director's findings shall contain an evaluation of the affect of
37 the emergency measures on public health. When the requested measures

1 include the aerial application of pesticides in a large urban
2 residential area for the control of an Asian gypsy moth infestation,
3 the findings shall also include a summary of the information relied
4 upon in determining the extent of the danger, the alternative control
5 measures considered and the recommended measures, and, when applicable,
6 the director's response to the public comments received upon the notice
7 under section 5 of this act.

8 (2) If an emergency is declared pursuant to RCW 43.06.010(~~(+14)~~)
9 (13), the director may appoint a committee to advise the governor
10 through the director and to review emergency measures necessary under
11 the authority of RCW 43.06.010(~~(+14)~~) (13) and this section and make
12 subsequent recommendations to the governor. The committee shall
13 include representatives of the agricultural and silvicultural
14 industries, state and local government, public health interests,
15 technical service providers, and environmental organizations. When the
16 director proposes as an emergency measure the aerial application of
17 pesticides in a large urban residential area for the control of Asian
18 gypsy moths, the director shall appoint such a committee to provide
19 advice to the governor. The committee shall also include
20 representatives of the local health jurisdiction as well as the city or
21 county government for the area, and organizations representing
22 residents of the area. The committee formed as required before an
23 emergency aerial application of pesticides shall undertake such review
24 expeditiously and provide such information and recommendations within
25 the time that the governor directs.

26 (3) Upon the order of the governor of the use of emergency
27 measures, the director is authorized to implement the emergency
28 measures to prevent, control, or eradicate plant pests or plant
29 diseases that are the subject of the emergency order. Such measures,
30 after thorough evaluation of all other alternatives, may include the
31 aerial application of pesticides.

32 (4) Upon the order of the governor of the use of emergency
33 measures, the director is authorized to enter into agreements with
34 individuals or companies, or both, to accomplish the prevention,
35 control, or eradication of plant pests or plant diseases,
36 notwithstanding the provisions of chapter 15.58 or 17.21 RCW, or any
37 other statute. The director shall adopt procedures for notifying the
38 community in the application area before each aerial application of
39 pesticides in a large urban residential area for the control of Asian

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

6 (5) The director shall continually evaluate the emergency measures
7 taken and report to the governor at intervals of not less than ten
8 days. When the emergency measures taken include the aerial application
9 of pesticides in a large urban residential area for the control of
10 Asian gypsy moths, the local health jurisdiction, with support from the
11 department of health, shall monitor public health effects following the
12 implementation of the measures in such areas.

13 (6) The director shall immediately advise the governor if he or she
14 finds that the emergency no longer exists or if certain emergency
15 measures should be discontinued.

16 **Sec. 7.** RCW 43.06.010 and 1994 c 223 s 3 are each amended to read
17 as follows:

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

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

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

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

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

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

1 (6) The governor may require the attorney general or any
2 prosecuting attorney to inquire into the affairs or management of any
3 corporation existing under the laws of this state, or doing business in
4 this state, and report the same to the governor, or to any grand jury
5 designated by the governor, or to the legislature when next in session;

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

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

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

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

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

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

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

1 (14) On all compacts forwarded to the governor pursuant to RCW
2 9.46.360(6), the governor is authorized and empowered to execute on
3 behalf of the state compacts with federally recognized Indian tribes in
4 the state of Washington pursuant to the federal Indian Gaming
5 Regulatory Act, 25 U.S.C. Sec. 2701 et seq., for conducting class III
6 gaming, as defined in the Act, on Indian lands.

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