

HOUSE BILL REPORT

E2SHB 1009

As Passed Legislature

Title: An act relating to the commission on pesticide registration.

Brief Description: Establishing a commission on pesticide registration.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Chandler, Skinner, Kremen, Delvin, Schoesler, Mastin, Chappell, Grant, Foreman, D. Schmidt, Boldt, Clements and Stevens).

Brief History:

Committee Activity:

Agriculture & Ecology: 1/10/95, 1/12/95 [DPS];
Appropriations: 2/2/95, 2/27/95 [DP2S w/o sub AG].

Floor Activity:

Passed House: 3/7/95, 96-0.
Senate Amended.
House Concurred.
Passed Legislature.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Chandler, Chair; Koster, Vice Chair; McMorris, Vice Chair; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; R. Fisher; Honeyford; Johnson; Kremen; Poulsen; Regala; Robertson; Rust and Schoesler.

Staff: Kenneth Hirst (786-7105).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture. Signed by 28 members: Representatives Silver, Chairman; Clements, Vice Chairman; Huff, Vice Chairman; Pelesky, Vice Chairman; Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Basich; Beeksma; Brumsickle; Carlson; Chappell; Cooke; Crouse; Dellwo; G. Fisher; Hargrove; Hickel; Jacobsen;

Lambert; Lisk; Poulsen; Reams; Rust; Sehlin; Sheahan; Talcott; Thibaudeau and Wolfe.

Staff: Nancy Stevenson (786-7137).

Background: FIFRA. The registration and use of pesticides is regulated at the national level by the Federal Insecticide, Fungicide, and Rodenticide Act, or FIFRA. In general, a pesticide cannot be sold or distributed within the United States unless it has been registered with the U.S. Environmental Protection Agency (EPA). The "pesticides" regulated in this manner encompass herbicides, insecticides, and similar chemicals that control pests. In November 1984, the studies and data required to be submitted in support of the registration of a pesticide were expanded. With the 1988 amendments to FIFRA, Congress required, with certain limited exceptions, that pesticides originally registered before November 1, 1984, be reregistered under the data requirements which apply to pesticides registered after that date. In 1988, approximately 44,000 pesticide products with 611 active ingredients were registered for use. By October 1991, there were approximately 20,000 registered products with 405 active ingredients.

Minor crops. In general, pesticides are considered to be for minor crops or minor uses in the context of the federal pesticide registration process if the acreage on which the pesticides would potentially be used is minor on a national scale. Crops such as apples which are important to this state's agricultural economy are considered to be "minor" crops in this context.

Delaney Clause. The Federal Food, Drug and Cosmetic Act prohibits the sale of a raw agricultural commodity which bears or contains a pesticide chemical that is unsafe within the meaning of Section 408 of the act or food which contains a food additive that is unsafe within the meaning of Section 409 of the act.

Under Section 408 of the act, the EPA is permitted to set tolerances for the presence of pesticide residues in or on raw agricultural commodities. These tolerances must protect the public health. The administrator of the EPA is expressly authorized to establish the tolerance level at a zero level if the scientific data does not justify the establishment of a greater tolerance.

Section 409 of the act contains the Delaney Clause, which states, in part, that ". . . no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal . . ." The Delaney Clause provides a zero tolerance for carcinogens, regardless of their concentration. However, in a 1992 decision, the U.S. Court of Appeals (Ninth Circuit) noted that if a tolerance for a pesticide residue has been established for a pesticide residue in or on a raw agricultural commodity, another provision of the act allows for the 'flow-through' of the residue to processed foods, even when the pesticide may be a carcinogen. This flow-through is allowed,

however, only to the extent that the concentration of the pesticide in the processed food does not exceed the concentration allowed in the raw food. In its 1992 decision, the circuit court struck down rules of the EPA which would have permitted concentrations of cancer-causing pesticides residues greater than that tolerated for raw foods so long as the particular substances posed only a 'de minimis' risk of actually causing cancer. Enforcement of the Delaney Clause is likely to result in the cancellation of the registration of additional pesticide uses.

Food and Environmental Quality Lab. State legislation enacted in 1991 created the Food and Environmental Quality Laboratory operated by Washington State University (WSU) in the Tri-Cities to conduct pesticide residue studies regarding food, the environment, and safety. One of its responsibilities is evaluating regional requirements for minor crop registrations through the federal InterRegional Research Project Number 4 (IR-4) program. The IR-4 program was established to provide residue and efficacy data in support of: the registration or reregistration of minor use pesticides; and tolerances for residues of minor use chemicals in or on raw agricultural commodities.

Summary of Bill: A Commission on Pesticide Registration is created. It is to provide guidance to WSU's Food Safety and Environmental Quality Lab in the area of pesticide registrations for minor crops and minor uses and in regard to the availability of pesticides for emergency uses. Use of state monies appropriated to WSU specifically for studies or activities regarding pesticide registrations must be approved by the commission. Such an appropriation may be used for: (1) conducting studies concerning the registration of pesticides for minor crops and minor uses and the availability of pesticides for emergency uses; (2) a program for tracking the availability of pesticides for such crops and uses; and (3) the support of the commission and its activities. With the approval of the commission, these monies may be used for studies conducted by WSU's lab or may be secured from other qualified labs, researchers, or contractors. The purchase of proprietary information is expressly authorized. Before approving a residue study, the commission must ensure that there is registrant support and willingness or ability to add the crop to its label. Not less than 25 percent of such appropriations must be dedicated to studies concerning the registration of pesticides for crops which are not among the top 20 agricultural commodities produced in the state.

The commission is made up of 12 voting members appointed by the Governor. One voting member is appointed from one of each of 12 specified segments of the state's agricultural industry and must be nominated by an association or commodity commission from that segment of the industry. Nominations for initial appointments must be submitted by September 1, 1995, and the initial appointments must be made by October 15, 1995. The voting members serve three-year terms, although the first set of terms are for one, two and three years to provide staggered terms for the members. A member may be removed from the commission for incapacity,

incompetence, neglect of duty, or malfeasance. The commission is to select a chair from its voting members. Among the non-voting members of the commission is the coordinator of the IR-4 project at WSU.

WSU's Lab is directed to provide a program for tracking the availability of effective pesticides for minor crops, minor uses and emergency uses. The commission is to provide guidance to the lab regarding this tracking program and means of providing the tracking information to organizations of agricultural producers. The commission must also encourage agricultural organizations to provide assistance for studies regarding pesticide registrations and emergency uses and must ensure that the activities of the lab are coordinated with the work of other labs. Each biennium, the commission must prepare a contingency plan for providing studies that will address emergency conditions that may arise. The commission may receive gifts and grants for its use.

The commission must submit a report to the Legislature by December 15, 2002, and must be evaluated by legislative committees during the following legislative session.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Agriculture & Ecology) (1) Washington ranks third among the states in the diversity of crops grown. The "one size fits all" products resulting from the national pesticide reregistration program do not meet this state's needs. (2) More than one thousand pesticides essential to minor crops will be lost. It now appears that no chemical company will be registering pesticides for half of the crops grown in the state; some pesticide uses will also be lost on the other half. The federal IR-4 program will address only 20 percent of the pesticide research requested for this state. (3) The Delaney Clause of the Federal Food, Drug and Cosmetic Act will result in the cancellation of even more uses of pesticides yet the risk of cancer posed by drinking orange juice as authorized under the act is much greater than the risk posed by pesticides to be cancelled under Delaney requirements. (4) As growers turn to more generally used pesticides to replace those lost to reregistration, they may be faced with using products that are more toxic to workers and less effective in controlling pests and that need to be applied more frequently or in larger amounts. (5) Export markets which were expanding will be lost for crops that require the control of particular pests and crop yields will decrease. This bill will increase the number of pesticides reregistered for Washington's minor crops by 50 percent. (6) The bill assists economic development. (7) Hop growers faced cancellations early in the process and have in the last seven years embarked on 18 IR-4 projects by

providing studies which cost \$10,000 to \$75,000 per study; the alternative was replacing this state's crops with imports. (8) Growers near urban areas need pesticides that are very target specific to keep chemical use low and to keep from harming beneficial insects. Integrated pest management programs also need such pesticides. These pesticides are being lost. (9) The commission is needed to ensure that the monies will be spent efficiently and to press the federal government harder for the registration of products, including natural products. (10) Most pesticides are not being registered for bulb and flower use. (11) Free trade agreements mean states such as ours will be vulnerable to the importation of pests. The bill is needed to address the disasters that are waiting to happen. (12) Seed crops have taken 30 years to develop; seed companies have germination rate requirements for these crops and germination rates are threatened by the inability of growers to control pests. (13) The ability of the growers of 209 of the state's 230 crops to compete in the world market is threatened by the loss of pesticides. (14) The bill will make the state cleaner, safer, and more productive.

(Appropriations) Agriculture is a \$6 billion industry in Washington. Help is needed in solving pest management problems. The agriculture industry is reaching a crisis stage given our limited ability to manage pests in our environment. This bill provides research to help solve these problems.

Testimony Against: (Agriculture & Ecology) (1) An advisory committee for WSU's Lab and its Center for Sustaining Agriculture has been created by statute but its members have not been appointed. A new commission is not needed. (2) The center needs to be involved in addressing the issues faced by growers. The dissemination of information regarding alternatives to pesticides and the exploration of such alternatives is needed. Just throwing pesticides at the problem will not work; the pests will again become resistant. (3) Many pesticides are not being reregistered for health and safety reasons, not just for financial reasons.

(Appropriations) None.

Testified: (Agriculture & Ecology) Del Vanderhoff (pro); Alan Schreiber, Washington State University (pro); Ann George, Washington Hop Commission (pro); Gaylord Enbom, Washington St. Horticulture Assoc. (pro); Jim Shigio, Jim Shigio Farms (pro); Michael Youngquist, Western Wash. Fruits and Vegetables (pro); Brian Sakuma Raspberry Berry Commission (pro); Ken Dahlstedt (pro); Peter Sword, Western Wash. Farm Crops Assoc. (pro); Chris Peters, Peters Orchards (pro); Bob Hitt, Washington Cranberry Alliance (pro); Earl Darst, Northwest Bulb Growers (pro); Curtis Johnson, Western Wash. Farm Crops Assoc. (pro); Duncan Wurm, Friends of Farms and Forests (pro); Terry Dorsey (pro); and Cha Smith, Washington Toxics Coalition (con).

(Appropriations) Bill Garvin, Washington State Farm Bureau; Del Vanderhuff, citizen; Terry Dorsing, citizen; Janelle Keller, Washington State Grange; Jeff McDowell, Washington State Grange; Ray Shindler, Washington Association of Wheat Growers, Washington Asparagus Growers and Potato Growers of Washington; Chris Cheney, Washington Growers League; and Enid Layes, Washington State Horticulture Association.