
**Agriculture & Ecology
Committee**

E2SSB 5425

Brief Description: Implementing notices and procedures regarding aerial application of pesticides to eradicate plant pests.

Sponsors: Senate Committee on Environment, Energy & Water (originally sponsored by Senators Kohl-Welles, Jacobsen and Fraser).

Brief Summary of Engrossed Second Substitute Bill

- Establishes requirements regarding aerial applications of pesticides to eradicate Asian gypsy moths in large residential areas.
- Requires consultation and assessment regarding possible human health risks, public notice and hearings regarding such pesticide applications and adds requirements for requesting and securing an order from the Governor regarding emergency measures regarding such aerial applications.
- Expressly adds threats to the silvicultural industry by infestations of plant pests or diseases to the reasons such orders by the Governor may be issued.

Hearing Date: 2/28/02

Staff: Kenneth Hirst (786-7105).

Background:

Pesticide Registration & Disclosure. The registration and use of pesticides is regulated at the national level by the Federal Insecticide, Fungicide, and Rodenticide Act. 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. The "pesticides" regulated in this manner include herbicides, insecticides, and other products that control pests. (7 U.S.C. Sec. 136 et seq.) At the state level, pesticides sold or distributed within the state must be registered under the Washington Pesticide Control Act. (Chapter 15.58 RCW.) The state act is administered by the Washington State Department of Agriculture (WSDA).

The Pesticide Control Act requires an applicant for a pesticide registration to reveal to the

WSDA the complete formula of the pesticide, including the active and inert ingredients. The act prohibits this information from being revealed except to proper officials and employees of the state, state courts in response to subpoenas, and physicians or, in emergencies, to other qualified persons for the preparation of antidotes. (RCW 15.58.060 and .150.)

The state act also prohibits confidential business information regarding the pesticide that is of a proprietary nature from being disclosed to any other person. However, when necessary to administer the act, information regarding unpublished formulas of products may be revealed to a state or federal agency or, under certain circumstances, at a public hearing or in findings of fact. In such a case, the registrant of the pesticide is to be given the opportunity to institute an action in the superior court for a declaratory judgment regarding whether the information is subject to protection from disclosure. (RCW 15.58.060 and .065.)

If the Director of Agriculture determines that an imminent danger of an infestation of plant pests or plant diseases exists that seriously endangers the agricultural or horticultural industries of the state, or that seriously threatens life, health, or economic well-being, the director must request the Governor to order emergency measures to control the pests or diseases. The Director's findings must contain an evaluation of the affect of the emergency measures on public health. (RCW 17.24.171.) The Governor may, after finding that such a danger exists within this state, order emergency measures to prevent or abate the infestation or disease. The measures may include, after a thorough evaluation of all other alternatives, the aerial application of pesticides. (RCW 43.06.010.)

Summary of Bill:

Consultation & Assessment. The Director of Agriculture must conduct certain consultations when the Director proposes to eradicate Asian gypsy moth through the aerial application of pesticides within a large urban residential area. The Director must consult with public university personnel and federal, state, and local health agencies concerning unpublished formulas of the products acquired to obtain an independent assessment of the possible human health risks associated with the proposed use. Such a "large urban residential area" is an area: lying within the boundaries of a city with a population of greater than 100,000; and an urban growth area contiguous to the city where residential uses are a permitted or a conditional use.

To assess the possible human health risks associated with the proposed pesticide use, the Director must reveal to the consulted individuals the confidential statement of formula. The people consulted must consider anything that may bear on public health in making their assessment of the possible human health risks.

The Director must make any independent assessment available to the public. However, the following must not be disclosed: the names, chemical abstract service numbers, or other identifying characteristics or percentages of inert ingredients in a pesticide, any other information the Director believes should be confidential, and any information or documents used in preparation of an independent assessment that pertain to the confidential statement of formula and any protected trade secret information. (Sections 1 and 3.)

Public Notice. When the presence of Asian gypsy moth is detected within a large urban

residential area by surveys and other measures, and the aerial application of pesticides is considered, the Director must provide public notice of the survey results and the alternative measures for eradication. A public meeting must be held within the area. A comment period is provided. (Section 4.)

Governor's Orders. New requirements are established regarding requests made by the Director to the Governor to order emergency control measures. If the requested measures include the aerial application of pesticides in a large urban residential area for the eradication of Asian gypsy moths, the findings provided by the Director must include: a summary of the information relied upon in determining the extent of the danger; the alternative measures considered; and the Director's response to any public comments received following public notice. (Section 5 (1).)

Procedures for notifying the community in the application area before each such aerial application, including notification to those who have requested individual notice and to major employers and institutional facilities, including schools, child care facilities, senior residential and day care facilities, health care facilities, and community centers. For such an aerial application, the local health jurisdiction, with support from the Department of Health, must monitor public health effects following the implementation of the measures in the area. (Section 5(2), (4), and (5).) The Governor cannot approve such an emergency measure unless the Governor determines that all other alternatives are not feasible or likely to eradicate the pest. (Section 6.)

Representatives of the silvicultural industry are added to the advisory committee that may be appointed to advise the Governor when the Governor is requested to issue an emergency orders for the control or plant pests or diseases and threats to the silvicultural industry by such infestations are expressly added to the reasons such orders may be issued. (Sections 5(2) and 6(13).)

Appropriation: None.

Fiscal Note: Requested on February 14, 2002.

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