

HOUSE BILL REPORT

E2SSB 6518

As Reported by House Committee On:
Rural Development, Agriculture, & Natural Resources
Appropriations

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:

Rural Development, Agriculture, & Natural Resources: 2/26/20, 2/28/20 [DPA];
Appropriations: 2/29/20, 3/2/20 [DPA(APP w/o RDAN)].

Brief Summary of Engrossed Second Substitute Bill
(As Amended by Committee)

- Directs the Department of Agriculture to adopt emergency rules that include specific control measures for the use of chlorpyrifos.
- Specifies that funding must be provided to research alternatives to chlorpyrifos, and for training and enforcement of the Washington Pesticide Control Act.

HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE, & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 11 members: Representatives Blake, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chapman, Dye, Fitzgibbon, Lekanoff, Pettigrew, Ramos and Springer.

Minority Report: Do not pass. Signed by 3 members: Representatives Orcutt, Schmick and Walsh.

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.

Staff: Rebecca Lewis (786-7339).

Background:

Chlorpyrifos.

Chlorpyrifos is an organophosphate pesticide used in agricultural, non agricultural, and residential areas to control insects. It is used to control 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, the 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. The EPA plans to continue to review the science addressing neurodevelopmental effects and complete its assessment by October 1, 2022.

State Pesticide Registration and Application Regulation.

The Department of Agriculture (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.

The Washington State Commission on Pesticide Registration (Commission) was created by statute in 1995. The statutes creating the Commission also dedicate the use of state monies appropriated to Washington State University (WSU) specifically for studies or activities regarding pesticide registrations. The use of these monies must be approved by the Commission. The monies 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.

Summary of Amended Bill:

The Director of the Department of Agriculture must adopt emergency rules that include specific control measures for chlorpyrifos. The rules must be 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 and must take effect by January 1, 2022.

Subject to amounts appropriated, the Washington State Commission on Pesticide Registration must work with agricultural grower groups who presently use chlorpyrifos to research alternative pest control strategies. Additional funding must be provided to the Department of Agriculture for training and enforcement of the Washington Pesticide Control Act.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill removes the prohibition on the use of chlorpyrifos, related exemptions, and emergency permit and replaces those provisions with a requirement that the Director of the Department of Agriculture conduct emergency rulemaking regarding the use of chlorpyrifos.

The requirement that the Department of Ecology develop water quality standards sufficient to protect aquatic life and ensure that any surface water chlorpyrifos pollution will not impact groundwater, taking into consideration injury to children and pregnant women, is removed. Additionally, the direction that the Department of Health and State Board of Health develop and adopt maximum contaminant levels for chlorpyrifos in Group A water systems is removed.

Intent language is changed to remove certain language addressing impacts to salmon, children, and pregnant women. Language referencing prenatal exposure to chlorpyrifos is replaced with language that recognizes the margin of safety required by the federal Food Quality Protection Act to protect infants and children.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) A ban on chlorpyrifos took effect in California on February 1 of this year, and the prime sponsor had many constituents contact her to bring a bill forward to follow California's lead. The United States Environmental Protection Agency (EPA) has banned the use of chlorpyrifos in various household products because of the danger to health. The EPA was moving towards a permanent ban for agricultural uses before the change in the administration after the 2016 election. Residues on fruit and vegetables have been deemed safe for adults, but not for children. Where chlorpyrifos was found in the testing of umbilical cord samples, children were much more likely to be diagnosed with autism, attention deficit disorder, and attention deficit hyperactivity disorder. There are people who question the data because it is based on umbilical cord samples, which are subject to privacy laws. Some crops are exempted from the prohibition because there currently are not other pest control options available, but funding is provided for additional research to find alternatives and enforcement of current pesticide application laws.

(Opposed) Prior to 2001, most chlorpyrifos was used for household uses with different techniques than are used in agriculture. Pesticides using chlorpyrifos are important tools in managing leafhoppers and little cherry disease. In some cases, diseased cherry trees have to be removed, causing significant losses to orchardists. Chlorpyrifos is also used in some

common products such as animal collars, and is used to treat fences. Eliminating the use of one chemical is a slippery slope to begin to ban the use of other chemicals. The emergency permit requirements are unattainable for some crops, including onions. If a farmer finds an onion maggot, they have about 24 hours to treat the crop before it is destroyed. Onions are typically treated very early in the growing season, and the residue does not remain in the soil. Science does not support a ban. Chlorpyrifos is authorized for use in over 70 countries, and both the World Health Organization and Health Canada have determined that the level established by the EPA is healthy. The Treefruit Risk Assessment is a complicated process that takes both ecological health and human health into account. The EPA is currently under a court order to review the science on the health impacts of chlorpyrifos and may only take action if there is credible data. An interim decision is due to be released by October of this year. The EPA is required to ensure the health of both children and pregnant women when regulating pesticides, and was advised to not use the Columbia study. The bill was developed without stakeholder input, and without an understanding of federal pesticide regulations.

(Other) Chlorpyrifos is a very hazardous pesticide. It not only kills harmful pests, but also beneficial insects such as ladybugs. The null and void clause may be a strategy that opponents of the ban are using to stop the bill. There is support for a ban on the chemical, but the bill does not go far enough, and the exempted uses should be removed. At a minimum, the exemptions should eventually expire. This is a race equity issue, as farmworkers in Washington are overwhelmingly people of color. Other states have moved forward with bans, including Hawai'i and Oregon. The EPA has banned the use of chlorpyrifos in various household products because of the danger to health. The EPA was moving towards a permanent ban for agricultural uses before the change in the administration after the 2016 election. Residues on fruit and vegetables have been deemed safe for adults, but children are vulnerable to the effects at lower levels. Children of agricultural workers are often exposed to the residues brought home on their parent's clothing. Some households may not have adequate washing facilities to ensure all the residue is washed away.

There is a significantly complicated regulatory system around pesticides. There is concern that the ban is a political decision rather than a decision based on science. Shifting to agency rulemaking is a better way to provide more oversight over the use of this chemical. Reasonable is in the eye of the beholder, and context. The Christmas tree industry appreciates that Christmas trees are included as an exempt crop. Chlorpyrifos has been registered in Washington since 1965. The amended bill reflects changes required to allow more time to research alternatives. There are possible drift and worker exposure issues. The Department of Agriculture supports the training and enforcement provisions.

Persons Testifying: (In support) Senator Rolfe, prime sponsor.

(Opposed) April Clayton, Red Apple Orchards; Howard Jensen, Sunheaven Farms; Tom Davis, Washington Farm Bureau, Tom McBride, FarWest Agribusiness Association; David Epstein, Northwest Horticultural Council; and Heather Hansen, Washington Friends of Farms and Forests.

(Other) Patti Goldman, Seattle Earth Justice; David Linn; Andrea Schmitt, Columbia Legal Services; Jim Jesernig, Washington Potato and Onion Association; Brad Tower, Washington Christmas Tree Growers Association; and Kelly McLain, Department of Agriculture.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Rural Development, Agriculture, & Natural Resources. Signed by 31 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Steele, Sullivan, Tarleton, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 2 members: Representatives Corry and Sutherland.

Staff: Dan Jones (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Rural Development, Agriculture, & Natural Resources:

The amended bill:

- deletes a reference to an exemption that was previously removed from the bill; and
- corrects a reference to the Washington Pesticide Application Act.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. If specific funding is not provided in the omnibus appropriations act by June 30, 2020, the bill is null and void.

Staff Summary of Public Testimony:

(In support) The striking amendment from the policy committee will exponentially streamline the fiscal note, freeing up money to dedicate to researching alternatives for chlorpyrifos, and for training and enforcement of pesticide laws. The Department of Agriculture has an excellent pesticide application training program, but it is not big enough. The Model Toxics Control Operating Account is the appropriate fund source to fund additional training and enforcement related to pesticide control. Although there is support for a ban, there is still support for giving the Department of Ecology authority to adopt rules regarding the use of chlorpyrifos. Chlorpyrifos is a chemical known to have very detrimental health effects and is still used in agriculture. People can be exposed to the chemical through drift, residue on crops or on clothing, or from groundwater pollution. There may be federal preemption issues to a ban that the striking amendment addresses.

(Opposed) None.

Persons Testifying: Jim Jesernig, Washington Potato and Onion Association; Nick Federici, Toxic Free Future; Peter Godlewski, Association of Washington Business; and Heather Hansen, Washington Friends of Farms and Forests.

Persons Signed In To Testify But Not Testifying: None.