

HOUSE BILL REPORT

HB 1956

*As Reported By House Committee on:
Agriculture & Rural Development*

Title: An act relating to protection of the plant industry.

Brief Description: Changing provisions for plant protection.

Sponsor(s): Representatives Rayburn, Nealey, McLean, Kremen, Chandler, Roland and Rasmussen; by request of Department of Agriculture.

Brief History:

Reported by House Committee on:
Agriculture & Rural Development, February 19, 1991, DPS.

**HOUSE COMMITTEE ON
AGRICULTURE & RURAL DEVELOPMENT**

Majority Report: *That Substitute House Bill No. 1956 be substituted therefor, and the substitute bill do pass.*

Signed by 11 members: Representatives Rayburn, Chair; Kremen, Vice Chair; Nealey, Ranking Minority Member; P. Johnson, Assistant Ranking Minority Member; Chandler; Grant; R. Johnson; Lisk; McLean; Rasmussen; and Roland.

Staff: Kenneth Hirst (786-7105).

Background: Local Plant Pest & Disease Boards. State law permits the county commissioners of a county to create a horticultural pest and disease board. Among the authorities of such a board is the power to require the owner of land to control and prevent the spread of horticultural pests and diseases on the owner's land. If the owner fails to perform the required work, the board may perform that work or cause it to be performed. The expense of the work is charged to the landowner.

Plant & Bee Protection. The Director of Agriculture has broad authority to impose quarantines and to take actions regarding plant pests and diseases under the state's plant pest and disease control laws. The director has similar authorities regarding bees, hives, and beekeeping articles under the state's apiary laws. A person's first violation of the plant pest and disease laws or rules is a misdemeanor; each subsequent violation is a gross

misdemeanor. A violation of the apiary laws is a Class I civil infraction.

If the governor declares a plant pest or disease emergency, the director is authorized to take implementing actions. These actions may include the aerial application of pesticides only after the director's thorough evaluation of other alternatives. The director may enter agreements with others to perform the actions necessary to respond to the emergency. The director may also enter agreements to indemnify, under certain circumstances, those who take these actions on behalf of the director.

Summary of Substitute Bill:

PLANT REMOVAL BY LOCAL BOARD

The circumstances are identified under which an action may be taken by a county horticultural pest and disease board to destroy infested plants without the consent of the owner of the land on which the plants are located.

The board may petition the superior court of the county for an order directing the landowner to show cause why the plants should not be removed at the owner's expense and for an order authorizing the removal. If the landowner fails to appear or fails to show by competent evidence that the pest or disease has been controlled, the court must authorize the board to remove the plants at the owner's expense.

If this procedure is followed, no action for damages for removal of the plants lies against the board, its officers or agents, or the county.

PLANT AND BEE PROTECTION

General. Some of the authorities of the Director of Agriculture to regulate bees and pests of bees under the state's apiary laws are integrated with the director's authorities to regulate plants and pests of plants.

The authority of the director now expressly includes the power to adopt rules under which plants, plant products, bees, hives and beekeeping equipment and noxious weeds may be brought into this State and the circumstances under which these and genetically engineered organisms may be transported through this State. The purposes for which the Director may establish a quarantine now expressly include the protection of environmental interests. The director may require a person with controlled articles which may carry plant or bee pests or noxious weeds to disclose the origin and source of these items.

Penalties. A person who fails to comply with these laws or rules may be subject to a civil penalty of not more than \$5000 dollars for each violation. Although violations are also still misdemeanors, provisions of current law are repealed which declare second and subsequent offenses to be gross misdemeanors.

Permits. No organism that may directly or indirectly affect plant life in the State may be introduced into or released within the State without a special permit issued by the Department of Agriculture. Except for approved research projects, no permit for a biological control agent may be issued unless the department has determined that the parasite, predator, or plant pathogen is target organism or plant specific and is not likely to become a pest of nontarget plants or other beneficial organisms. Although the department must be notified regarding the introduction or release of a genetically engineered plant or plant pest organism, a permit is not required if the introduction or release has been approved under federal law.

Actions - Costs. Before taking an action to treat, return or destroy an article impounded by the department, the director must provide the owner of the article with an opportunity for a hearing on the action. The costs of impounding, treating, returning, or destroying an article must be borne by the owner of the article. A person who causes an infestation to become established through the knowing and willful violation of a quarantine may be required to pay the costs of public control or eradication measures.

Emergencies. If a pest control emergency is declared by the governor, the authority of the director to take implementing actions is no longer confined by the requirement that the director evaluate all other alternatives before authorizing the aerial application of pesticides. The provisions of law are repealed which authorize the director to enter certain indemnity contracts with persons or firms which perform implementing activities.

Disclosure. The director shall not make information submitted by applicants or registrants under these laws available to the public if the director determines that it contains or relates to trade secrets or commercial or financial information.

Fees; Dedicated Account. The authority of the department to provide services on a fee-for-service basis is expanded. Fees for these services are to be deposited in a plant pest account, which is created in the agricultural local fund rather than, under current law, being deposited in the general fund.

Other. The director may acquire property for establishing quarantine stations, for the propagation of biological control agents, or for the isolation of biological control agents, genetically engineered plants or plant pests, or of bee pests. The director may enter cooperative arrangements with other persons and entities for conducting enforcement activities.

Substitute Bill Compared to Original Bill: The substitute bill: clarifies that the information which may be withheld from public inspection is certain information submitted by an applicant or registrant under these laws; changes references in the original bill to a pest control "fund" to a pest control "account"; expressly creates the account and identifies the purposes for which it may be used; and links the misdemeanor penalty under these laws to the penalties prescribed by the Criminal Code.

Fiscal Note: Requested February 19, 1991.

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

Testimony For: (Taken from testimony on the parent bill, HB 1483.) (1) The bill provides a strong quarantine law. A well enforced quarantine is the best and most cost effective means of controlling pests and diseases. (2) The department now issues permits for plant protection for the federal government but has no authority to enforce them. The bill gives the department permitting authority. (3) The plant pest account permits services to be provided on a fee-for-service basis. (4) The bill provides a court procedure which is necessary for local control of infested, abandoned orchards. It will help local officials to control pests on lands held by banks.

Testimony Against: (Taken from testimony on the parent bill, HB 1483.) (1) The bill gives only superficial control of genetically engineered organisms. This subject is far too complex to be regulated as provided by the bill. No requirements are established for public input or for environmental impact statements. (2) The definition of genetic engineering is too narrow to cover all of the means by which plants and other organisms are engineered. (3) The federal permit process for genetically engineered organisms is a maze of overlapping jurisdictions. As a result, it is not clear which organisms have been "approved" by the federal government. (4) Importing naturally occurring organisms into a new area can have disastrous effects. At least the same is true for releasing genetically engineered, new life. The risks should be

carefully evaluated and controlled at least as much as they are for non-native species.

Witnesses: (Taken from testimony on the parent bill, HB 1483.) Mike Schwisow and Bill Brookreson, Department of Agriculture (in favor); Frank DeLong, Washington State Horticultural Association (in favor); and Chuck Wolverton, Yakima Horticultural Pest and Disease Board (in favor). Opposed to provisions regarding genetically engineered organisms: Ralph Maokie and Beth Burrows, Washington Biotechnology Action Council; John Haugen, Campus Greens; and Jeff Parsons, National Audubon Society.