

HOUSE BILL REPORT

HB 1451

As Reported by House Committee On:
Agriculture & Ecology

Title: An act relating to pesticide use in schools.

Brief Description: Regulating pesticide use in schools.

Sponsors: Representatives Cooper, G. Chandler, Linville, Marine, Rockefeller, Haigh, Simpson, Kagi and Keiser; by request of Department of Agriculture.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/9/01, 2/23/01 [DPS].

Brief Summary of Substitute Bill

- Requires any person making an application of a non-restricted use pesticide to a school facility to be licensed as a school facility applicator and establishes re-certification requirements for those so licensed.
- Requires each day care center, kindergarten, elementary school, and secondary school to provide certain notices of its pest control policies and methods, and to provide notice of and post signs regarding applications of pesticides to its buildings and property, and provides exemptions from this requirement.
- Expands the types of applications of pesticides to other landscapes for which notification markers must be placed and regarding which records must be kept.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Mielke, Republican Vice Chair; Delvin, Dunshee, Grant, Hunt, Kirby, Quall, Roach and Sump.

Minority Report: Without recommendation. Signed by 1 member: Representative Schoesler.

Staff: Kenneth Hirst (786-7105).

Background:

Pesticide Registration and Use. 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 encompass herbicides, insecticides, and similar chemicals that control pests. At the state level, pesticides sold or distributed within the state must be registered under the Washington Pesticide Control Act. The use or application of pesticides in the state is regulated under the Washington Pesticide Application Act. These state laws are administered by the Washington State Department of Agriculture (WSDA).

Licenses. Among the persons who must be licensed by the WSDA to apply pesticides are persons who are in the business of applying pesticides to the lands of others, their employees, government employees who apply restricted use pesticides, persons who use restricted use pesticides on their own agricultural lands, persons who use restricted use pesticides on their own lands for non-agricultural purposes, and demonstration and research applicators.

Landscape Applications. Persons who are licensed as applicators must post markers when they make landscape applications of pesticides to schools, nursery schools, or licensed day cares; certain residential or commercial properties; golf courses; or parks, cemeteries, rest stops, or similar properties identified by rule. These markers must provide certain specified information regarding the applications.

Recordkeeping. Licensed applicators, persons applying pesticides to more than one acre of agricultural land in a year, public entities making road-side applications of pesticides, and with certain exceptions, licensed applicators making landscape applications of pesticides must make and maintain certain specified records of the applications.

Summary of Substitute Bill:

Licenses Required for School Facility Applicators. It is unlawful for any person to use or supervise the use of any non-restricted use pesticide, except an antimicrobial pesticide, on a school facility without the person having a school facility applicator license from the WSDA. This requirement does not apply to persons already licensed under the Pesticide Application Act as private commercial applicators or public operators. The fee for the license is \$25. If a person licensed as a school facility applicator is also licensed as a private applicator, the person is exempted from the licensing fee for the private applicator's license. To qualify for re-licensure, a school facility applicator must accumulate at least 20 WSDA- approved continuing education credits every five years,

with no more than eight credits in a year and not less than four credits regarding integrated pest management in schools. School facility applicators must have and maintain the types of records of pesticide applications currently required of certified applicators and certain others. With certain exceptions, a school facility applicator cannot apply a pesticide by means of any type of ground, water, or aerial equipment that uses motorized, mechanical, or pressurized power.

The "school facilities" subject to these requirements and requirements for notices and signs are facilities used for licensed day care center, kindergarten, or elementary or secondary school purposes, including the buildings, structures, playgrounds, landscape areas, athletic fields, school vehicles, and other areas of school property.

School Facility Applications: Notices and Signs. Each "school" must provide written notice annually, or upon enrollment, to parents or guardians of students and employees describing the school's pest control policies and methods, including the posting and notification requirements. The schools subject to this requirement are licensed day care centers, kindergartens, elementary schools, and secondary schools. Such a school must establish a notification system that, as a minimum, notifies interested parents or guardians of students and employees at least 48 hours before a pesticide application is made to a school facility. The notification system must include posting of the notice in a prominent place in the main office of the school. The content of such a notice is specified.

A school facility application must be made within 48 hours following the intended date and time stated in the notice or the notification process must be repeated. The school must, at the time of application, post notification signs for all pesticide applications made to school facilities unless the application is otherwise required to be posted by a certified applicator under current law.

Notification signs for applications made to school grounds by school employees must be placed at the location of the application and at each primary point of entry to the school grounds. The site and content of the signs are specified. Notification signs for applications made to school facilities other than school grounds must be posted at the location of the application. The size and content of these signs are also specified. The signs must remain in place for at least 24 hours from the time the application is completed or during the restricted re-entry interval required by the pesticide's label, whichever is longer.

A school must make the records of all pesticide applications to school facilities readily accessible to interested persons. These must include an annual summary of the records. A commercial pesticide applicator who applies a pesticide to a school facility must provide a copy of the application record to the school within 24 hours. A school is not liable for the removal of signs by unauthorized persons. A school that complies with these requirements may not be held liable for personal property damage or bodily injury resulting from signs that are placed as required.

Exemptions. These requirements regarding school facility applications do not apply to applications of antimicrobial pesticides intended for use as disinfectants or sanitizers, or to the placement of insect or rodent baits that are not accessible to children. The pre-notification requirements do not apply: if the application is made when the school is not occupied by students for at least two consecutive days after the application; or to any emergency applications for controlling any pest that poses an immediate human health or safety threat, such as an application to control stinging insects. Notification is required following such an emergency application.

Provisions Governing Other Types of Applications. The landscape applications of pesticides for which marking and other requirements are currently established are altered. The applications regulated in this manner are applications of pesticides to the exterior landscaped area, not just the plants in that area. The pesticide application records that must now be made and maintained by licensed applicators and certain others must now also be made and maintained by any person who applies a pesticide to the exterior landscaped areas of commercial properties such as apartments or shopping centers; golf courses; schools, nursery schools, day cares; or parks, cemeteries, rest stops, or similar property identified by rule. Exempted from the recordkeeping requirements for all who must keep them are applications of antimicrobial pesticides intended for use as disinfectants or sanitizers. As under current law, these requirements for marking and recordkeeping do not apply to applications made by licensed private applicators, structural applications of pesticides made by licensed applicators, certain pesticide applications made to control mosquitos, or applications of pesticides to residences other than apartments.

The waiver of liability established in current law for the placement or unauthorized removal of markers now applies to any person complying with the marker placement requirements for landscape applications. The location on a marker used for a landscape application for a commercial applicator's telephone number is changed.

Substitute Bill Compared to Original Bill:

The substitute bill adds a null and void clause. The substitute bill also adds provisions requiring follow-up notification after an emergency application of pesticides, and requiring annual summaries of pesticide application records to be available to the public. The effective date of the provisions regarding record keeping, posting and notification is nine months earlier in the substitute bill than in the original bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect September 1, 2001, except that sections 1 and 3 through 6, which require school facility applicator licenses and establish licensing fee and re-certification requirements, take effect on January 1, 2002.

Null and Void: The bill is null and void unless specific funding is provided in the omnibus appropriations act by June 30, 2001.

Testimony For: (Original bill) (1) A work group of a wide variety of interests including schools, the PTA, and applicators met several times this interim to develop a functional and practical program. Their work is an important response to the issue. The bill is a very reasonable step in the right direction. (2) Requiring licenses for school applicators is very important. Although over 300 public school employees are currently licensed, many who apply pesticides at schools are not. The bill ensures that they will receive the education needed to use pesticides properly and only when needed. The training required is targeted to school situations and includes training in integrated pest management. (3) Money for schools to implement this bill is earmarked in the Governor's budget. (4) Children are more susceptible to harmful effects from exposure to pesticides, and at lower levels of exposure than adults. Their exposure is greater because they have more skin area per pound and they are more likely to ingest contamination through hand to mouth activity. Repeated pesticide exposure increases the likelihood of childhood cancer. It is important to limit children's exposure to pesticides. (5) There will be costs for providing parents with ongoing notifications. To lower the cost, some schools use a registry system for identifying who is to receive notices. Parents can add their names to the registry at any time. (6) A wide variety of products, including naturally occurring substances, are "pesticides" within the meaning of state and federal law. (7) For persons allergic to bee stings, bee control can be a life and death situation.

Testimony Against: (Original bill) (1) Federal registration of a pesticide is not a safety determination. Pesticide use is linked to serious health effects. (2) The notices regarding school pesticide applications should be sent to all parents, not just interested parents who have signed up for a school notification registry. Parents may not know that a registry exists. (3) The notices should be posted at all school entry doors and notices should also be sent following each emergency application of pesticides. (4) The annual notice to parents should give a summary of the previous year's pesticide applications, and it should identify what will be used in the coming year and why. It should show trends; is pesticide use being reduced? (5) Parents should be notified of applications made during breaks or if the area treated by pesticides is to be occupied by students within 14 days of the application; pesticides linger long after the applications. (6) The signs required should be improved and their use should be more extensive. Better signs should be required for playground applications. Warning signs should be posted 48 hours in advance. (7) Pesticide use by capital contractors should be more closely regulated. (8) This program should not be an unfunded mandate by the state. (9) One school applied 2,4-D to the playground just before recess. In another, the pesticide levels on an applied area were 100 times the allowed exposure limit two weeks after the application. A 48

hour notice is a nominal notice. (10) New York now requires even neighboring residents to be notified.

Testified: (Original bill, in support) Jill Albinger; David Westberg, Stationary Engineers; Heather Hansen, Washington Friends of Farms and Forests; Mary Beth Lang, Department of Agriculture; and Carol Taylor Cann, Parent-Teachers Association.

(Original bill, in support, with funding) John Bussiere, Seattle School District; and Ken Kanikeberg, Office of the Superintendent of Public Instruction.

(Original bill, with concerns) Maria Mason, IPM; Therese and Jim Cushing; Erika Schreder, Washington Toxics Coalition; Alison Wise, Washington Public Interest Research Group; Diane Cortese, OV Environmental Council; and Trudy Bialic.