

HOUSE BILL REPORT

ESB 6273

*As Passed House - Amended
March 6, 1992*

Title: An act relating to clarifying the department of agriculture's authority to regulate pesticides.

Brief Description: Clarifying the department of agriculture's authority.

Sponsor(s): Senators Patterson, Snyder and Barr.

Brief History:

Reported by House Committee on:

Agriculture & Rural Development, February 27, 1992, DPA;
Passed House, March 6, 1992, 58-38.

**HOUSE COMMITTEE ON
AGRICULTURE & RURAL DEVELOPMENT**

Majority Report: *Do pass as amended.* 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: The state's Department of Agriculture administers the state's Pesticide Control Act and Pesticide Application Act. Under the Pesticide Control Act, the department regulates the registration and sale of pesticides and the commercial rendering of advice regarding the use of pesticides. The department regulates the use of pesticides under the Pesticide Application Act. Through the combination of these acts, the department administers the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) on behalf of the state.

In a 1991 decision, the U.S. Supreme Court found that Congress has not preempted local regulation of pesticides through the adoption of FIFRA. In a memorandum to the state's director of the Department of Agriculture, an assistant attorney general suggests that the lack of specific provisions in current law showing the Legislature's intent to preempt local governments from regulating

pesticides would make it difficult to demonstrate that current state law provides such preemption.

In the Pesticide Application Act, the Legislature has declared that the provisions of the act requiring all structural pest control operators, exterminators, and fumigators to be licensed by the Department of Agriculture do not prevent certain cities and counties from also licensing structural pest control operators, exterminators, and fumigators operating within their territories.

The state building code established by the State Building Code Act adopted by reference a uniform fire code and uniform fire code standards. The building code council is authorized to make certain amendments to the state code. The state code applies in all cities and counties in the state; however, the governing body of a city or county is authorized to amend the code as it applies to its jurisdiction as long as the minimum performance standards and objectives of the code are not diminished.

Summary of Bill: Limitations on the authority of units of local government to regulate pesticides are established until July 1, 1994, in the following manner:

(1) In general, a city, town, or county may not regulate the use of pesticides on lands designated as being agricultural or forest lands under the Growth Management Act, land classified as farm and agricultural land under the open space taxation laws, land on which pesticide use is regulated under the Forest Practices Act, or rights of way or easements for state highways or public utilities. However, a city, town, or county may regulate the use of pesticides on such lands to implement requirements of the state's Department of Health or state Board of Health for protecting drinking water or to provide compliance with the Department of Ecology's water quality standards.

(2) No unit of local government except a city, town, or county may regulate pesticides. A city, town, or county regulating the use of pesticides must consult with the departments of Agriculture, Ecology, and Health.

These limitations do not prohibit a unit of local government from managing or regulating pesticides on property in which the unit has an ownership or leasehold interest.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: Before California preempted local governments under its pesticide law, Mendocino County adopted a county-wide ban on the aerial application of pesticides. The ban frustrated not only timber operations but also marijuana control operations of drug enforcement agencies.

Testimony Against: (1) Although a public education program is the best means of preventing the contamination of public water supplies by pesticides, the county should not be precluded from taking regulatory action to protect drinking water. (2) A task force should be appointed to specify the jurisdiction of local governments to control pesticides. In the interim, local governments should be encouraged to work in cooperation with the state in this arena. (3) Three major state programs depend on the implementation programs of local governments which would be hampered by this bill. These are programs for growth management and for protecting well-heads and surface and groundwater from contamination. (4) Over 95 percent of the state's drinking water comes from wells, but this bill hampers local well-head protection programs. (5) Passing this bill sends a message that pesticides should be used indiscriminately. (6) The Department of Agriculture is not equipped to respond to needs of local governments to protect drinking water and sensitive areas. (7) There is no evidence of problems being created by the actions of local governments to control pesticides; passage of the bill is not warranted. (8) The bill constitutes deregulation, not preemption.

Witnesses: (In favor): Dan Blankenship, Washington Association of Wheat Growers; Chris Bakkus, Association of Washington Business; and Dennis Kelly, CIBA-GEIGY.
Opposed: George Barner, Thurston County Health Board; Cynthia Sullivan, Association of Washington Counties; Elizabeth Tabbutt, Washington Environmental Council; Cha Smith, Washington Toxics Coalition; Doris Cellarius, Sierra Club; Dave Clark, Department of Health; Evelyn Walseth, League of Women Voters of Washington; Jeff Parsons, National Audubon Society; Bob Mack, Washington Association of Cities; and Tim Gojio, King County Environmental Health Department.