

FINAL BILL REPORT

E2SHB 1009

C 390 L 95

Synopsis as Enacted

Brief Description: Establishing a commission on pesticide registration.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Chandler, Skinner, Kremen, Delvin, Schoesler, Mastin, Chappell, Grant, Foreman, D. Schmidt, Boldt, Clements and Stevens).

House Committee on Agriculture & Ecology

House Committee on Appropriations

Senate Committee on Agriculture & Agricultural Trade & Development

Background: FIFRA. The registration and use of pesticides is regulated at the national level by the Federal Insecticide, Fungicide, and Rodenticide Act, or FIFRA. 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 (EPA). In November 1984, the studies and data required to be submitted in support of the registration of a pesticide were expanded. With the 1988 amendments to FIFRA, Congress required, with certain limited exceptions, that pesticides originally registered before November 1, 1984, be reregistered under the data requirements which apply to pesticides registered after that date. In 1988, approximately 44,000 pesticide products with 611 active ingredients were registered for use. By October 1991, there were approximately 20,000 registered products with 405 active ingredients.

Minor crops. In general, pesticides are considered to be for minor crops or minor uses in the context of the federal pesticide registration process if the acreage on which the pesticides would potentially be used is minor on a national scale. Crops such as apples which are important to this state's agricultural economy are considered to be "minor" crops in this context.

Delaney Clause. The Federal Food, Drug and Cosmetic Act prohibits the sale of a raw agricultural commodity which bears or contains a pesticide chemical that is unsafe within the meaning of Section 408 of the act or food which contains a food additive that is unsafe within the meaning of Section 409 of the act.

Under Section 408 of the act, the EPA is permitted to set tolerances for the presence of pesticide residues in or on raw agricultural commodities. These tolerances must protect the public health. The administrator of the EPA is expressly authorized to

establish the tolerance level at a zero level if the scientific data does not justify the establishment of a greater tolerance.

Section 409 of the act contains the Delaney Clause, which states, in part, that ". . . no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal" The Delaney Clause provides a zero tolerance for carcinogens, regardless of their concentration. However, in a 1992 decision, the U.S. Court of Appeals (Ninth Circuit) noted that if a tolerance for a pesticide residue has been established for a pesticide residue in or on a raw agricultural commodity, another provision of the act allows for the 'flow-through' of the residue to processed foods, even when the pesticide may be a carcinogen. This flow-through is allowed, however, only to the extent that the concentration of the pesticide in the processed food does not exceed the concentration allowed in the raw food. In its 1992 decision, the circuit court struck down rules of the EPA which would have permitted concentrations of cancer-causing pesticides residues greater than that tolerated for raw foods so long as the particular substances posed only a 'de minimis' risk of actually causing cancer. Enforcement of the Delaney Clause is likely to result in the cancellation of the registration of additional pesticide uses.

Food and Environmental Quality Lab. State legislation enacted in 1991 created the Food and Environmental Quality Laboratory operated by Washington State University (WSU) in the Tri-Cities to conduct pesticide residue studies regarding food, the environment, and safety. One of its responsibilities is evaluating regional requirements for minor crop registrations through the federal InterRegional Research Project Number 4 (IR-4) program.

Summary: A Commission on Pesticide Registration is created. It is to provide guidance to WSU's Food Safety and Environmental Quality Lab in the area of pesticide registrations for minor crops and minor uses and in regard to the availability of pesticides for emergency uses. Use of state monies appropriated to WSU specifically for studies or activities regarding pesticide registrations must be approved by the commission. Such an appropriation 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. With the approval of the commission, these monies may be used for studies conducted by WSU's lab or by other qualified labs, researchers, or contractors. The purchase of proprietary information is expressly authorized. Before approving a residue study, the commission must ensure that there is registrant support and willingness or ability to add the crop to its label. Not less than 25 percent of such appropriations must be dedicated to studies concerning the registration of pesticides for crops which are not among the top 20 agricultural commodities produced in the state.

The commission is made up of 12 voting members appointed by the Governor. One voting member is appointed from one of each of 12 specified segments of the state's agricultural industry and must be nominated by an association or commodity commission from that segment of the industry. Nominations for initial appointments must be submitted by September 1, 1995, and the initial appointments must be made by October 15, 1995. The voting members serve three-year terms, although the first set of terms are for one, two and three years to provide staggered terms for the members. A member may be removed from the commission for incapacity, incompetence, neglect of duty, or malfeasance. The commission is to select a chair from its voting members. The commission also has non-voting members, one of whom is the coordinator of the IR-4 project at WSU.

WSU's Lab is directed to provide a program for tracking the availability of effective pesticides for minor crops, minor uses and emergency uses. The commission must encourage agricultural organizations to provide assistance for studies regarding pesticide registrations and emergency uses and must ensure that the activities of the lab are coordinated with the work of other labs. Each biennium, the commission must prepare a contingency plan for providing studies that will address emergency conditions that may arise. The commission may receive gifts and grants for its use.

The commission must submit a report to the Legislature by December 15, 2002, and must be evaluated by legislative committees during the following legislative session.

Votes on Final Passage:

House	96	0
Senate	39	0 (Senate amended)
House	89	0 (House concurred)

Effective: July 23, 1995