



1995 SENATE BILL 305

August 23, 1995 - Introduced by Senators BURKE and RISSER, cosponsored by Representatives BOCK, BALDWIN, BOYLE, CARPENTER, CULLEN, LA FAVE, NOTESTEIN, PLACHE, R. POTTER, ROBSON, R. YOUNG and L. YOUNG. Referred to Committee on Transportation, Agriculture and Local Affairs.

1 **AN ACT to renumber** 160.03; **to amend** 15.07 (1) (cm), 15.13, 29.29 (4), 93.07 (9),
2 94.69 (9), 94.69 (10), 94.707 (2), 94.707 (3) (a), 94.707 (3) (b), 94.71 (3) (c) and
3 250.09 (1); and **to create** 94.707 (1) (g), 94.707 (3) (d) 1m. and 160.03 (2) of the
4 statutes; **relating to:** the membership of the board of agriculture, trade and
5 consumer protection, contamination of groundwater by pesticides and banning
6 pesticide products that contain atrazine.

Analysis by the Legislative Reference Bureau

This bill includes provisions related to the membership of the board of agriculture, trade and consumer protection, groundwater contamination by pesticides and the use of atrazine.

Under current law, the board of agriculture, trade and consumer protection consists of 6 members with agricultural backgrounds and one member who is a consumer representative.

Under this bill, the board of agriculture, trade and consumer protection consists of 2 members with agricultural backgrounds, 2 members who are consumer representatives, 2 members who represent business interests and one member who represents environmental interests. The bill provides that persons who are members of the board when the bill takes effect cease to hold office when members with the new qualifications are appointed.

Under the current groundwater law, a state agency has several responsibilities related to the prevention of groundwater contamination by activities regulated by the state agency. Also under current law, the department of agriculture, trade and consumer protection (DATCP) regulates the use of pesticides.

This bill provides that the department of natural resources (DNR), rather than DATCP, is to be considered to be the state agency that regulates the use of pesticides

for the purposes of the groundwater law. Thus, DNR would assume the responsibilities under the groundwater law related to the prevention of groundwater contamination by pesticide use.

Under current law, most administrative rules related to pesticide use do not take effect until they are approved by the pesticide review board. Pesticide rules to protect groundwater, however, are not subject to approval by the pesticide review board.

Under this bill, pesticide rules to protect groundwater are subject to approval by the pesticide review board.

Current administrative rules of DATCP regulate the use of pesticides that contain atrazine by authorizing DATCP to designate areas in which specific restrictions on atrazine use apply, or areas in which atrazine use is prohibited.

This bill prohibits the distribution, offering for sale, sale or use on or after July 1, 1996, of pesticides that contain atrazine. The bill also requires that a person, except a pesticide dealer or distributor, who owns any pesticide containing atrazine on July 1, 1996, return the pesticide within 6 months to its manufacturer or to the pesticide dealer or distributor from whom the pesticide was purchased. A pesticide dealer or distributor who owns any pesticide containing atrazine on July 1, 1996, must return the pesticide within one year to its manufacturer.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 15.07 (1) (cm) of the statutes is amended to read:

2 15.07 (1) (cm) The term of one member of the ethics board shall expire on each
3 May 1. The terms of 3 members of the development finance board appointed under
4 s. 15.155 (1) (a) 6. shall expire on May 1 of every even-numbered year and the terms
5 of the other 3 members appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of
6 every odd-numbered year. The terms of the 3 members of the land and water
7 conservation board appointed under s. 15.135 (4) (b) 2. shall expire on January 1.
8 The term of the member of the land and water conservation board appointed under
9 s. 15.135 (4) (b) 2m, shall expire on May 1 of an even-numbered year. The terms of
10 members of the real estate board shall expire on July 1. The terms of the appraiser
11 members of the real estate appraisers board and the terms of the auctioneer and

1 auction company representative members of the auctioneer board shall expire on
2 May 1 in an even-numbered year. The terms of the members of the radioactive waste
3 review board shall expire as provided in s. 15.915 (4) (c). The term of a member of
4 the board of agriculture, trade and consumer protection expires on May 1 of an
5 even-numbered year if the term begins in an even-numbered year.

6 **SECTION 2.** 15.13 of the statutes is amended to read:

7 **15.13 Department of agriculture, trade and consumer protection;**
8 **creation.** There is created a department of agriculture, trade and consumer
9 protection under the direction and supervision of the board of agriculture, trade and
10 consumer protection. The board shall consist of ~~6~~ 2 members with an agricultural
11 background, 2 members who represent business interests, one member who
12 represents environmental interests and ~~one member~~ 2 members who ~~is a~~ are
13 consumer representative representatives, appointed for staggered 6-year terms.
14 Appointments to the board shall be made without regard to party affiliation, or
15 residence or interest in any special organized group.

16 **SECTION 3.** 29.29 (4) of the statutes is amended to read:

17 **29.29 (4) USE OF PESTICIDES.** The department of natural resources, after public
18 hearing, may promulgate rules governing the use of any pesticide which it finds is
19 a serious hazard to wild animals other than those it is intended to control, and the
20 making of reports thereon. In making such determinations, the department to the
21 extent relevant shall consider the need for pesticides to protect the well-being of the
22 general public. It shall obtain the recommendation of the pesticide review board and
23 such rules, ~~other than rules to protect groundwater promulgated to comply with ch.~~
24 ~~160,~~ are not effective until approved by the pesticide review board. "Pesticide" has
25 the meaning designated in s. 94.67.

1 **SECTION 4.** 93.07 (9) of the statutes is amended to read:

2 93.07 (9) GROUNDWATER PROTECTION. To comply with the requirements of ch. 160
3 in the administration of any program, responsibility or activity assigned or delegated
4 to it by law, except with respect to the use of pesticides.

5 **SECTION 5.** 94.69 (9) of the statutes is amended to read:

6 94.69 (9) To govern the use of pesticides, including their formulations, and to
7 determine the times and methods of application and other conditions of use, except
8 that the department may not promulgate rules that govern the use of pesticides in
9 order to assure compliance with ch. 160.

10 **SECTION 6.** 94.69 (10) of the statutes is amended to read:

11 94.69 (10) The department shall promulgate rules when it determines that it
12 is necessary for the protection of persons or property from serious pesticide hazards
13 and that its enforcement is feasible and will substantially eliminate or reduce such
14 hazards. In making this determination the department shall consider the toxicity,
15 hazard, effectiveness and public need for the pesticides, and the availability of less
16 toxic or less hazardous pesticides or other means of pest control. It shall obtain the
17 recommendations of the pesticide review board and such rules, ~~other than rules to~~
18 ~~protect groundwater adopted to comply with ch. 160,~~ are not effective until approved
19 by the pesticide review board. Such rules shall not affect the application of any other
20 statutes or rule adopted thereunder.

21 **SECTION 7.** 94.707 (1) (g) of the statutes is created to read:

22 94.707 (1) (g) Beginning July 1, 1996,
23 2-chloro-4-ethylamino-6-isopropylamino-1,3,5 triazine (atrazine).

24 **SECTION 8.** 94.707 (2) of the statutes is amended to read:

1 94.707 (2) EXEMPTION. The prohibition under sub. (1) does not apply to a person
2 using or possessing a pesticide product containing any active ingredient under sub.
3 (1) (a) to (f) (g) according to the terms and conditions of an experimental use permit
4 issued under the federal act or rules of the department.

5 **SECTION 9.** 94.707 (3) (a) of the statutes is amended to read:

6 94.707 (3) (a) No later than 6 months after the applicable date under par. (d),
7 any person, except a dealer or distributor, who owned any quantity of a pesticide
8 listed in sub. (1m) or containing an active ingredient listed in sub. (1) (c) to (f) (g) on
9 the applicable date under par. (d) shall return or deliver all of that pesticide to the
10 manufacturer or to the dealer or distributor from whom he or she purchased the
11 pesticide.

12 **SECTION 10.** 94.707 (3) (b) of the statutes is amended to read:

13 94.707 (3) (b) No later than one year after the applicable date under par. (d),
14 any dealer or distributor who owned any amount of a pesticide listed in sub. (1m) or
15 containing an active ingredient listed in sub. (1) (c) to (f) (g) on the applicable date
16 under par. (d) or who received any such pesticide under par. (a) shall return or deliver
17 all of that pesticide to the manufacturer.

18 **SECTION 11.** 94.707 (3) (d) 1m. of the statutes is created to read:

19 94.707 (3) (d) 1m. For pesticide products containing the ingredient under sub.
20 (1) (g), July 1, 1996.

21 **SECTION 12.** 94.71 (3) (c) of the statutes is amended to read:

22 94.71 (3) (c) In addition to other enforcement procedures, the department may
23 issue a special order under s. 93.18 prohibiting the use, application, storage,
24 distribution or sale of pesticides in violation of ss. 94.67 to 94.71 or rules issued under
25 ss. 94.67 to 94.71. ~~A special order may be issued under this paragraph to prevent or~~

1 ~~control pesticide contamination of groundwater under ss. 160.23 and 160.25.~~ Special
2 orders may be issued on a summary basis, without prior complaint, notice or hearing,
3 where necessary to protect public health or the environment. A summary special
4 order is subject to a subsequent right of hearing before the department, if requested
5 within 10 days after the date on which the order is served. Any party affected by the
6 order may request a preliminary or informal hearing pending the scheduling and
7 conduct of a full hearing. Hearings, if requested, shall be conducted as expeditiously
8 as possible after receipt of a request for a hearing. Enforcement of the order shall
9 not be stayed pending action on the hearing.

10 **SECTION 13.** 160.03 of the statutes is renumbered 160.03 (1).

11 **SECTION 14.** 160.03 (2) of the statutes is created to read:

12 160.03 (2) (a) In this subsection, "pesticide" has the meaning given in s. 94.67
13 (25).

14 (b) For the purposes of this chapter, the department shall be considered to be
15 the regulatory agency that regulates the use of pesticides.

16 **SECTION 15.** 250.09 (1) of the statutes is amended to read:

17 250.09 (1) The pesticide review board created by s. 15.195 (1) shall collect,
18 analyze and interpret information, and make recommendations to and coordinate
19 the regulatory and informational responsibilities of the state agencies, on matters
20 relating to the use of pesticides, particularly recommendations for limiting pesticide
21 use to those materials and amounts of pesticides found necessary and effective in the
22 control of pests and which are not unduly hazardous to persons, animals or plants.
23 Pesticide rules authorized by ss. 29.29 (4) and 94.69, except pesticide rules issued
24 under s. 94.705 (2) ~~and pesticide rules to protect groundwater promulgated to comply~~
25 ~~with ch. 160,~~ are not effective until approved by the review board.

1 **SECTION 16. Nonstatutory provisions; agriculture, trade and**
2 **consumer protection.**

3 (1) CURRENT BOARD MEMBERS. The persons who are members of the board of
4 agriculture, trade and consumer protection on the day before the first day of the 3rd
5 month beginning after the effective date of this subsection cease to hold office on the
6 first day of the 3rd month beginning after the effective date of this subsection or on
7 such later day that all of the persons first appointed under section 15.13 of the
8 statutes, as affected by this act, are appointed and qualify to hold office.

9 (2) INTERIM APPOINTMENTS. Notwithstanding the requirement under section
10 15.07 (1) (a) of the statutes of senate confirmation of appointments to the board of
11 agriculture, trade and consumer protection, a person who is one of the persons first
12 appointed under section 15.13 of the statutes, as affected by this act, may serve as
13 a member of the board beginning on the first day of the 3rd month beginning after
14 the effective date of this subsection or on such later day that all of those persons are
15 appointed and qualify to hold the office and may continue to hold office until the end
16 of the term specified in subsection (3) unless the appointment is first withdrawn, the
17 senate rejects the appointment or the person is removed from office under section
18 17.07 (3) or (5) of the statutes.

19 (3) NEW BOARD MEMBERS. Notwithstanding the length of terms specified in
20 section 15.13 of the statutes, as affected by this act, the terms of the first members
21 of the board of agriculture, trade and consumer protection appointed under section
22 15.13 of the statutes, as affected by this act, expire as follows:

23 (a) One of the members with an agricultural background on May 1, 1997, and
24 the other on May 1, 2000.

