

House BILL NO. 453

INTRODUCED BY Kadas

A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING THE PROVISIONS FOR AN ORDINANCE REGULATING THE NOTIFICATION OF AQUATIC HERBICIDE APPLICATION; AND AMENDING SECTION 80-8-120, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 80-8-120, MCA, is amended to read:

"80-8-120. Local pesticide regulation -- provisions for notification. (1) (a) A unit of local government may adopt an ordinance to regulate pesticide application that may include notification, provided that the ordinance is fully consistent with the authorities provided for in Title 80, chapter 8, and rules adopted under Title 80, chapter 8. The department shall develop a policy for the review and approval of local pesticide ordinances. A unit of local government shall submit a proposed ordinance to the department for verification that the proposed ordinance is consistent with the authorities provided for in Title 80, chapter 8. The ordinance may not be adopted until it has been approved by the department.

(b) A municipality may adopt an ordinance that requires a commercial applicator or an irrigation district to provide notification when applying an aquatic herbicide.

(2) If the ordinance requires notification, the following procedure must be followed:

(a) The applicator shall notify the local board of health in writing at least 10 days but no less than 7 days before the intended date of application. The written notification must include information from the label and from the material safety data sheet for the aquatic herbicide.

(b) Upon receipt of the written notification, the local board of health may publish a notice in accordance with the provisions of 7-1-2121 or 7-1-4127 at least 72 hours before the intended application date, followed by a second notice on the date of application, if possible.

(c) The local board of health may provide public service announcements to local radio and television stations at least 72 hours prior to the intended application date.

(d)(i) The applicator shall post signs at the time of herbicide application. The signs may not be removed until 48 hours after the application or until the safe reentry level on the herbicide label has expired,

- 1 whichever is later. Each sign must:
- 2 (A) be at least 4 inches in height and 5 inches in width;
- 3 (B) be made of a rigid, weather-resistant material, durable enough to be read for at least 48 hours
- 4 after posting;
- 5 (C) have a white background with red lettering; and
- 6 (D) be printed with 18-point type.
- 7 (ii) The front of the sign must contain a symbol depicting a person standing in water in a circle with
- 8 a diagonal line across the circle and the words "warning, chemical application, keep out" and "do not touch
- 9 or eat dead fish".
- 10 (iii) The back of the sign must contain the following information:
- 11 (A) the name of the applicator;
- 12 (B) the date and time of application;
- 13 (C) the trade name, the registry number assigned by the American chemical society, and the
- 14 chemical names of the active ingredients of the aquatic herbicide, if available;
- 15 (D) label information prescribing the safe reentry time;
- 16 (E) the known symptoms and health effects of exposure to the aquatic herbicide; and
- 17 (F) the telephone number of the applicator, landowner, or property manager who can supply further
- 18 information about the aquatic herbicide.
- 19 (iv) A sign must be posted at the actual point of application and at each public access to the
- 20 treated property, with the front of the sign facing the access.
- 21 (v) If only a spot aquatic herbicide application is made or only a small area is treated, a sign must
- 22 be posted at the location where the aquatic herbicide was applied, with the front of the sign facing the
- 23 probable path of access to the area.
- 24 (vi) The bottom of the sign must be at least 12 inches but not more than 16 inches above the
- 25 ground.
- 26 ~~{2}~~(3) A unit of local government may petition the department in writing to adopt rules to address
- 27 specific local conditions, as provided in 80-8-105(3)(a). The petition must document:
- 28 (a) the need for a rule, including the reason that existing rules do not address the particular
- 29 pesticide application;
- 30 (b) the need for specific local rules; and

1 (c) that a situation exists that threatens or is likely to threaten public health or environmental
2 quality in the jurisdiction of the unit of local government.

3 ~~(3)~~(4) Local rules may be administered, enforced, and financed by a unit of local government:

4 (a) through a cooperative agreement with the department, as provided under this section; or

5 (b) after the department adopts rules authorizing a unit of local government to administer, enforce,
6 and finance an ordinance.

7 ~~(4)~~(5) Within 30 days of receiving the petition, the department shall respond to the unit of local
8 government, stating:

9 (a) whether the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of
10 this section; and

11 (b) the procedures and time period for the promulgation of rules by the department, provided that
12 the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of this section.

13 ~~(5)~~(6) The department may enter into a cooperative agreement with a unit of local government for
14 the administration and enforcement of local rules adopted under 80-8-105(3)(a).

15 ~~(6)~~(7) Except as provided in subsection (1), a local government ordinance may not regulate or
16 prohibit the registration, labeling, distribution, use, or sale of pesticides. It is not the intent of this
17 subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides pursuant to Title
18 75, chapter 10, part 4.

19 ~~(7)~~(8) The department shall maintain and, upon request, distribute a register of ordinances adopted
20 by local governing bodies pursuant to subsection (1)."

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