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*House* BILL NO. *489*  
*S. Fry*

INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING THE PROVISIONS FOR A UNIT OF LOCAL GOVERNMENT TO REGULATE THE NOTIFICATION OF PESTICIDE APPLICATION; AMENDING SECTION 80-8-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, statewide uniformity in regulations, specifically pesticide notification posting and notification regulations a unit of local government may choose to enact, is in the best interest of Montana citizens; and

WHEREAS, excessive regulation inhibits Montana's economic health and the freedom of its citizens; and

WHEREAS, a local government is entitled to local control and may wish to enact an ordinance or resolution on pesticide application notification; and

WHEREAS, pesticides are a vital and necessary tool to protect Montanans from the threat of disease and economic harm caused by mosquitoes, weeds, and other pests; and

WHEREAS, this bill is in the best interest of the citizens of Montana.

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. (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. require a commercial applicator, as defined in 80-8-102(6), to provide notification when applying a pesticide, subject to the following provisions:~~

(i) The applicator shall post a sign or signs at the time of the pesticide application or provide

1 notification as provided for in subsection (1)(a)(v). The applicator, property owner, or property manager  
2 may not remove a sign until the pesticide is dry or the reentry interval on the pesticide label has expired,  
3 whichever is later.

4 (ii) A sign must be:

5 (A) at least 4 inches in height and 5 inches in width; and

6 (B) made of weather-resistant material if used for outdoor application.

7 (iii) A sign must contain:

8 (A) the words "pesticide application"; and

9 (B) the telephone number of the applicator, property owner, or property manager who can supply  
10 further information about the pesticide.

11 (iv) A sign must be posted:

12 (A) at each public access to the treated property with the front of the sign facing the access;

13 (B) if a driveway, sidewalk, or other vehicle or pedestrian thoroughfare intersects the boundary of  
14 the treated area, at a point clearly visible from an intersection;

15 (C) for a golf course, at a conspicuous place in the clubhouse or pro shop or at the first and tenth  
16 tees.

17 (v) Notification:

18 (A) for a right-of-way or irrigation ditch application must be provided in a local newspaper or on  
19 local radio or television stating that the property will be treated and providing the telephone number of an  
20 individual who can supply further information on the pesticide applications. Notification under this  
21 subsection (1)(a)(v)(A) must be made annually in the spring or immediately before the pesticide application;

22 (B) for an interior application must be a sign posted in a conspicuous place, must state "pesticides  
23 are applied periodically", and must provide the name of the property owner or property manager who can  
24 be contacted for information about the pesticide application.

25 (vi) Posting or notification is not required for the following:

26 (A) a spot treatment of an area that is less than 100 square feet;

27 (B) an applicator subject to the environmental protection agency's worker protection standards as  
28 published in 40 CFR, part 156, subpart K, and 40 CFR, part 170;

29 (C) an application on land that produces agricultural commodities for which gross sales in excess  
30 of \$1,000 were realized or can be expected to be realized during any calendar year;

1 (D) an application of a pesticide that is a minimum risk pesticide as published by the environmental  
2 protection agency in 40 CFR 152.25(g)(1) or a sanitizer, a disinfectant, or a microbial registered with the  
3 environmental protection agency;

4 (E) an application of a pesticide for mosquito control by a legally established mosquito control  
5 district;

6 (F) an emergency for which the governing body determines it is in the citizens' best interest not to  
7 require notification.

8 (b) A unit of local government that adopts a notification ordinance pursuant to 80-8-120 must:

9 (i) notify the department that it is adopting the ordinance on pesticide notification as provided in  
10 this section and provide the department a final copy for the department's register provided for in subsection  
11 (4); and

12 (ii) fund the costs, including but not limited to:

13 (A) educating its citizens of the ordinance's requirements;

14 (B) compensating personnel to enforce the ordinance; and

15 (C) prosecution of a violation of the ordinance.

16 ~~(2) A unit of local government may petition the department in writing to adopt rules to address~~  
17 ~~specific local conditions, as provided in 80-8-105(3)(a). The petition must document:~~

18 ~~(a) the need for a rule, including the reason that existing rules do not address the particular~~  
19 ~~pesticide application;~~

20 ~~(b) the need for specific local rules; and~~

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

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

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

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

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

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

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

3 ~~(5)(2)~~ The department may enter into a cooperative agreement with a unit of local government for  
 4 the administration and enforcement of local rules adopted under 80-8-105(3)(a).

5 ~~(6)(3)~~ Except as provided in ~~subsection~~ subsections (1) and (2), a unit of local government  
 6 ordinance may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides or  
 7 enact notification provisions more stringent than those provided for in subsections (1) and (2). It is not the  
 8 intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides  
 9 pursuant to Title 75, chapter 10, part 4.

10 ~~(7)(4)~~ The department shall maintain and, upon request, distribute a register of ordinances adopted  
 11 by local governing bodies pursuant to subsection (1)."

12  
 13 NEW SECTION. Section 2. Penalty. A person who violates a notification ordinance adopted  
 14 pursuant to [section 1(1)]:

15 (1) shall be subject to a written warning for the first violation;

16 (2) is guilty of a misdemeanor and upon conviction shall be fined not less than \$25 or more than  
 17 \$50 for the second violation; and

18 (3) is guilty of a misdemeanor and upon conviction shall be fined not less than \$50 or more than  
 19 \$500 for a third or subsequent conviction.

20  
 21 NEW SECTION. Section 3. Severability. If a part of [this act] is invalid, all valid parts that are  
 22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
 23 applications, the part remains in effect in all valid applications that are severable from the invalid  
 24 applications.

25  
 26 NEW SECTION. Section 4. Applicability. An ordinance adopted by a local government under  
 27 80-8-120 before [the effective date of this act] must comply with [this act] by January 1, 1998.

28  
 29 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

30 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0489, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act specifying the provisions for a unit of local government to regulate the notification of pesticide application.

ASSUMPTIONS:

**Department of Commerce/Local Government Assistance Division:**

1. It is assumed at least one government and possibly more would exercise the authority to adopt an ordinance to regulate the notification of pesticide application.
2. There would be violations of the ordinance resulting in fines imposed for the conviction of misdemeanor charges.

**Department of Agriculture:**

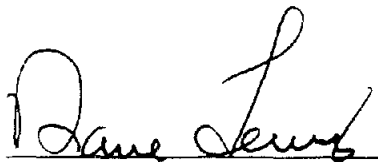
3. The department would be required to maintain a register of ordinances adopted by local governing bodies and distribute it upon request.
4. The department would continue to provide local governments with technical and educational assistance.
5. The department would have to review local ordinances to ensure their compliance with the statute.
6. The department would have minimal expense associated with maintaining and distributing registers. The costs cannot be determined because the number of local ordinances and their pages cannot be determined. Review of local ordinances for compliance with statute would be necessary.

FISCAL IMPACT:

No fiscal impact.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

A local government adopting an ordinance regulating the notification of pesticide application would have some costs of education, enforcing the ordinance and prosecuting violators of the ordinance. These costs are not determinable, but are expected to be minimal. The local government also would experience a minimal increase in revenue from the fines imposed for convictions involving the violations of the provisions of the ordinance.

 2-12-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
ROBERT STORY, PRIMARY SPONSOR      DATE

Fiscal Note for HB0489, as introduced

HB 489

1 HOUSE BILL NO. 489  
2 INTRODUCED BY STORY

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9 notification regulations a unit of local government may choose to enact, is in the best interest of Montana  
10 citizens; and

11 WHEREAS, excessive regulation inhibits Montana's economic health and the freedom of its citizens;  
12 and

13 WHEREAS, a local government is entitled to local control and may wish to enact an ordinance or  
14 resolution on pesticide application notification; and

15 WHEREAS, pesticides are a vital and necessary tool to protect Montanans from the threat of disease  
16 and economic harm caused by mosquitoes, weeds, and other pests; and

17 WHEREAS, this bill is in the best interest of the citizens of Montana.

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1 notification as provided in subsection (1)(a)(v). The applicator, property owner, or property manager  
 2 may not remove a sign until the pesticide is dry or the reentry interval on the pesticide label has expired,  
 3 whichever is later.

4 (ii) A sign must be:

5 (A) at least 4 inches in height and 5 inches in width; and

6 (B) made of weather-resistant material if used for outdoor application.

7 (iii) A sign must contain:

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9 (B) the telephone number of the applicator, property owner, or property manager who can supply  
 10 further information about the pesticide.

11 (iv) A sign must be posted:

12 (A) AT A POINT CLEARLY VISIBLE FROM EACH STREET OR ROAD FRONTAGE OF THE PROPERTY  
 13 SO THAT THE WARNING IS CONSPICUOUS FROM THE PUBLIC RIGHT-OF-WAY;

14 (B) FOR AN INTERIOR APPLICATION, at each public access to the treated property with the front  
 15 of the sign facing the access;

16 (B) if a driveway, sidewalk, or other vehicle or pedestrian thoroughfare intersects the boundary of  
 17 the treated area, at a point clearly visible from an intersection;

18 (C) for a golf course, at a conspicuous place in the clubhouse or pro shop or at the first and tenth  
 19 tees.

20 (v) Notification:

21 (A) for a right-of-way or irrigation ditch AN application BY A MOSQUITO CONTROL DISTRICT OR  
 22 A WEED CONTROL DISTRICT must be provided in a local newspaper or on local radio or television stating  
 23 that the property will be treated and providing the telephone number of an individual who can supply further  
 24 information on the pesticide applications. Notification under this subsection (1)(a)(v)(A) (1)(A)(V) must be  
 25 made annually in the spring or immediately before AND PERIODICALLY DURING the pesticide application;  
 26 SEASON.

27 (B) for an interior application must be a sign posted in a conspicuous place, must state "pesticides  
 28 are applied periodically", and must provide the name of the property owner or property manager who can  
 29 be contacted for information about the pesticide application.

30 (vi) Posting or notification is not required for the following:

1 (A) a spot treatment of an area that is less than 100 square feet;

2 (B) an applicator subject to the environmental protection agency's worker protection standards as  
3 published in 40 CFR, part 156, subpart K, and 40 CFR, part 170;

4 (C) an application on land ~~that produces agricultural commodities for which gross sales in excess~~  
5 of \$1,000 were realized or can be expected to be realized during any calendar year CLASSIFIED AS  
6 AGRICULTURAL LAND OR FOREST LAND FOR TAXATION PURPOSES;

7 (D) AN APPLICATION ON AN IRRIGATION CONVEYANCE FACILITY OR LAND OR ON AN  
8 IRRIGATION DITCH EASEMENT OR RIGHT-OF-WAY;

9 ~~(E)~~ (E) an application of a pesticide that is a minimum risk pesticide as published by the  
10 environmental protection agency in 40 CFR 152.25(g)(1) or a sanitizer, a disinfectant, or a microbial  
11 registered with the environmental protection agency;

12 ~~(E) an application of a pesticide for mosquito control by a legally established mosquito control~~  
13 ~~district;~~

14 ~~(F) an emergency for which the governing body determines it is in the citizens' best interest not to~~  
15 ~~require notification~~ AN APPLICATION ON A RAILROAD FACILITY OR RIGHT-OF-WAY;

16 (G) AN APPLICATION ON A PUBLIC UTILITY FACILITY OR RIGHT-OF-WAY.

17 (b) A unit of local government that adopts a notification ordinance pursuant to ~~80-8-120~~ must THIS  
18 SECTION SHALL:

19 (i) notify the department that it is adopting the ordinance on pesticide notification as provided in  
20 this section and provide the department a final copy for the department's register provided for in subsection  
21 (4); and

22 (ii) fund the costs, including but not limited to:

23 (A) educating its citizens of the ordinance's requirements;

24 (B) compensating personnel to enforce the ordinance; and

25 (C) prosecution of a violation of the ordinance.

26 (C) A UNIT OF LOCAL GOVERNMENT MAY NOT ADOPT A NOTIFICATION ORDINANCE UNDER  
27 THIS SECTION THAT IMPOSES ADDITIONAL FEE REQUIREMENTS ON A COMMERCIAL APPLICATOR.

28 ~~(2) A unit of local government may petition the department in writing to adopt rules to address~~  
29 ~~specific local conditions, as provided in 80-8-105(3)(a). The petition must document:~~

30 ~~(a) the need for a rule, including the reason that existing rules do not address the particular~~



- 1 pesticide application;
- 2 (b) ~~the need for specific local rules; and~~
- 3 (c) ~~that a situation exists that threatens or is likely to threaten public health or environmental~~
- 4 ~~quality in the jurisdiction of the unit of local government.~~
- 5 (3) ~~Local rules may be administered, enforced, and financed by a unit of local government:~~
- 6 (a) ~~through a cooperative agreement with the department as provided under this section; or~~
- 7 (b) ~~after the department adopts rules authorizing a unit of local government to administer, enforce,~~
- 8 ~~and finance an ordinance.~~
- 9 (4) ~~Within 30 days of receiving the petition, the department shall respond to the unit of local~~
- 10 ~~government, stating:~~
- 11 (a) ~~whether the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of~~
- 12 ~~this section; and~~
- 13 (b) ~~the procedures and time period for the promulgation of rules by the department, provided that~~
- 14 ~~the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of this section.~~
- 15 (5)(2) The department may enter into a cooperative agreement with a unit of local government for
- 16 the administration and enforcement of local rules adopted under 80-8-105(3)(a).
- 17 (6)(3) Except as provided in ~~subsection~~ subsections (1) and (2), a unit of local government
- 18 ordinance may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides or
- 19 enact notification provisions more stringent than those provided for in subsections (1) and (2). It is not the
- 20 intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides
- 21 pursuant to Title 75, chapter 10, part 4.
- 22 (7)(4) The department shall maintain and, upon request, distribute a register of ordinances adopted
- 23 by local governing bodies pursuant to subsection (1)."
- 24
- 25 NEW SECTION. Section 2. Penalty. A person who violates a notification ordinance adopted
- 26 pursuant to ~~{section 1(1)}~~ 80-8-120:
- 27 (1) ~~shall be~~ is subject to a written warning for the first violation;
- 28 (2) is guilty of a misdemeanor and upon conviction ~~shall~~ MAY be fined not ~~less than \$25 or more~~
- 29 ~~than \$50 for the second violation; and~~
- 30 (3) is guilty of a misdemeanor and upon conviction ~~shall~~ MAY be fined not ~~less than \$50 or more~~

1 than \$500 for a third or subsequent conviction.

2

3 NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are  
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
5 applications, the part remains in effect in all valid applications that are severable from the invalid  
6 applications.

7

8 NEW SECTION. **Section 4. Applicability.** An ordinance adopted by a local government under  
9 80-8-120 before [the effective date of this act] must comply with [this act] by January 1, 1998.

10

11 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

12

-END-

1 HOUSE BILL NO. 489

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4 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFYING THE PROVISIONS FOR A UNIT OF LOCAL  
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13 WHEREAS, a local government is entitled to local control and may wish to enact an ordinance or  
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15 WHEREAS, pesticides are a vital and necessary tool to protect Montanans from the threat of disease  
16 and economic harm caused by mosquitoes, weeds, and other pests; and

17 WHEREAS, this bill is in the best interest of the citizens of Montana.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
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- 2 (b) the need for specific local rules; and
- 3 (c) that a situation exists that threatens or is likely to threaten public health or environmental
- 4 quality in the jurisdiction of the unit of local government.
- 5 (3) Local rules may be administered, enforced, and financed by a unit of local government:
- 6 (a) through a cooperative agreement with the department as provided under this section; or
- 7 (b) after the department adopts rules authorizing a unit of local government to administer, enforce,
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- 9 (4) Within 30 days of receiving the petition, the department shall respond to the unit of local
- 10 government, stating:
- 11 (a) whether the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of
- 12 this section; and
- 13 (b) the procedures and time period for the promulgation of rules by the department, provided that
- 14 the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of this section.
- 15 (5)(2) The department may enter into a cooperative agreement with a unit of local government for
- 16 the administration and enforcement of local rules adopted under 80-8-105(3)(a).
- 17 (6)(3) Except as provided in ~~subsection~~ subsections (1) and (2), a unit of local government
- 18 ~~ordinance~~ may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides or
- 19 enact notification provisions more stringent than those provided for in subsections (1) and (2). It is not the
- 20 intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides
- 21 pursuant to Title 75, chapter 10, part 4.
- 22 (7)(4) The department shall maintain and, upon request, distribute a register of ordinances adopted
- 23 by local governing bodies pursuant to subsection (1)."

24

25 **NEW SECTION. Section 2. Penalty.** A person who violates a notification ordinance adopted

26 pursuant to ~~{section 1(1)}~~ 80-8-120:

- 27 (1) ~~shall be~~ IS subject to a written warning for the first violation;
- 28 (2) is guilty of a misdemeanor and upon conviction ~~shall~~ MAY be fined not ~~less than \$25 or~~ more
- 29 than \$50 for the second violation; and
- 30 (3) is guilty of a misdemeanor and upon conviction ~~shall~~ MAY be fined not ~~less than \$50 or~~ more



1 than \$500 for a third or subsequent conviction.

2

3 NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are  
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
5 applications, the part remains in effect in all valid applications that are severable from the invalid  
6 applications.

7

8 NEW SECTION. **Section 4. Applicability.** An ordinance adopted by a local government under  
9 80-8-120 before [the effective date of this act] must comply with [this act] by January 1, 1998.

10

11 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

12

-END-