

## Senate Bill 6529 would have destroyed Washington farms but now promotes collaboration

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### Key Findings

1. **On January 25, 2018 the Washington State Senate Labor and Commerce Committee heard testimony on Senate Bill 6529 - “an act relating to protecting agricultural workers and community members from pesticides.”**
2. **Despite being touted as a worker protection bill, the original bill would have done nothing to protect farm workers. Instead it sought to capitalize on misunderstandings about agriculture to push a fear-based proposal.**
3. **Pesticide drift rarely occurs, affecting less than 0.0006 percent of Washington’s population and all misapplications are punishable by three regulatory agencies.**
4. **SB 6529 was originally excessive, requiring a four-day notification of pesticide applications and to create a database of pesticide records. Other requirements were duplicative of existing processes.**
5. **SB 6529 changed to a collaborative approach to improve pesticide applications, through a work group that would provide recommendations to the 2019 legislature by November 2018. This version passed both chambers.**
6. **As the work group moves forward, it would do well to remember that proposing legislation that makes it too costly to farm or which does not adequately protect workers or help the environment is bad for all of Washington.**

### Introduction

Should farmers spend days watching insects and disease destroy crops before acting? New legislation would have created that effect with Senate Bill 6529. However, various interests worked to educate bill sponsors about current agricultural practices. The bill changed to a collaborative approach to improve pesticide applications, through a work group under Engrossed Second Substitute Senate Bill 6529.

However, this leads to an interesting conundrum – with the growing agricultural education effort nationally and statewide, why is agriculture still being targeted with duplicative and industry destroying regulations? Whatever the reason, the concerning aspect of the original Senate Bill 6529 was its lack of common sense. Hopefully, the work group will actually promote collaboration to assure all parties are protected and not just resurrect damaging ideas from the original bill.

### Background on the original Senate Bill 6529

On January 25, 2018, the Washington State Senate Labor and Commerce Committee heard testimony on Senate Bill 6529 - “an act relating to protecting agricultural workers and community members from pesticides.”<sup>1</sup>

Supporters of the original bill called it “common sense” but those who would have dealt with the consequences called it “destructive.”<sup>2</sup>

1 “Senate Bill 6529, An Act relating to protecting agricultural workers and community members from pesticides,” Washington State Legislature, January 22, 2018 at <http://lawfilesexst.leg.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/6529.pdf>.

2 “Senate Labor and Commerce Committee,” public hearing on SB 6529, TVW, January 25, 2018 at <https://www.tvw.org/watch/?eventID=2018011362>.

Which side was correct?

Despite being touted as a worker protection bill and supported by the Washington Labor Council and Washington Education Association, the bill would have done nothing to protect workers. Instead it sought to capitalize on misunderstandings about agriculture to push fear-based legislation.

Senate Bill 6529 would have required:<sup>3</sup>

- Farmers and other pesticide users to notify the Department of Health (DOH) four business days before any pesticide could be used.
- Farmers and other pesticide users to submit pesticide monthly records to the DOH.
- The DOH to develop a list of individuals who wish to be notified regarding pesticide applications on adjacent property.
- The DOH to make the data accessible to the public in a searchable, aggregated form without identifying the submitting applicators.
- DOH to investigate violations and assess a civil fine up to \$7,500.

At the committee hearing, three farmers were asked, “On a scale of 1 to 10 how destructive would this legislation be to your farm?” They all answered, “10.” Citing a number of reasons, the farmers made it clear this legislation could allow insects to destroy large portions of their crop before farmers could control the outbreak.

Farmers point to federal and state laws that already regulate pesticides. They note that additionally three state agencies provide oversight: the Department of Labor and Industries (L&I), the Department of

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3 “Senate Bill 6529, An Act relating to protecting agricultural workers and community members from pesticides,” Washington State Legislature, January 22, 2018 at <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/6529.pdf>.

Agriculture (WSDA), and the Department of Health (DOH).<sup>4</sup>

Unfortunately, SB 6529 ignored existing protections and sought to add more bureaucracy, without improving public or worker safety. Most of SB 6529’s policy objectives already exist. For example:

- Schools must already be notified at least 48 hours before a nearby pesticide application.<sup>5</sup>
- Farmers already maintain detailed records under the Pesticide Application Act and the Right to Know Act. These records must be available to the regulating agencies upon request.<sup>6</sup>
- WSDA already administers a sensitive persons list. They receive notification of any applications that are made adjacent to their property. The list has existed since 1992.<sup>7</sup>
- DOH already investigates pesticide-related illnesses. In fact, the current system for documenting any pesticide-related illness or drift experience is three to four years behind, with the most recent data recorded in 2014 and 2015.<sup>8</sup>

For the objectives of SB 6529 that went beyond existing law, specifically a four-day notification and a pesticide reporting database, two other points must be made:

1. Farming is an unpredictable business requiring fast turnaround for pesticide applications. Application must occur within hours to prevent extensive crop damage.

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4 “Senate Bill Report on SB 6529,” Washington state Senate, February 1, 2018, at <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bill%20Reports/Senate/6529%20SBA%20LBRC%202018.pdf>.

5 Ibid.

6 Ibid.

7 “Pesticide Sensitivity Registry,” by Washington state Department of Agriculture at <https://agr.wa.gov/pestfert/pesticides/sensitivityregistry.aspx>.

8 “Pesticide Event Summaries,” Washington Tracking Network, Washington State Department of Health, January 2016 at <http://www.doh.wa.gov/DataandStatisticalReports/EnvironmentalHealth/WashingtonTrackingNetworkWTN.aspx>.

The unanticipated side effects of such a regulation could increase pesticide use as farmers begin making preventative instead of prescriptive applications. Preventative sprays would also increase the risk of pesticide resistance.

2. Other states have attempted similar notification lists and searchable databases, only to find high costs and chaotic administration. For those states who have disclosed costs, the annual amount is usually around \$1 million, not including startup costs.<sup>9</sup>

Oregon Department of Agriculture tried a complex Pesticide Use Report System (PURS) but cancelled the program after just two years.<sup>10</sup>

### Revisions of SB 6529 lessened impacts but future problems could develop

Through bipartisan collaboration, SB 6529 was scaled back, and now only establishes “a pesticide application safety work group.”

The workgroup is to report to the Legislature and governor on November 1, 2018 on ways to improve pesticide application safety.<sup>11</sup>

The changes to SB 6529 generated support within the Senate and it passed 45 to 2. The House was less approving, though it passed 57 to 41 on February 28, 2018. The revised bill found that “collaboration between state agencies and the farming community can assist in further minimizing exposure of agricultural workers to pesticide drift.”

Despite the improvements made to SB 6529, its mere existence is still concerning for two reasons:

- Farmers and ranchers have significantly increased agricultural education efforts over the past few years, but measures like SB 6529 and others continue to be introduced, like last year’s Washington Food Policy Forum which originally relied on non-agricultural sources to make disparaging recommendations for farm practices.<sup>12</sup> Luckily the bill sponsor worked with farmers to reform the original proposal of the Food Policy Forum before it passed the House. It did not pass the Senate, though it received \$50,000 in funding.
- SB 6529 wrongly accuses farmers and claims their supposed infractions are unenforceable under the current law.<sup>13</sup> This is simply not the case. The majority of pesticide applications are made accurately with no drift. (Drift occurs when pesticides move outside the intended area.) When farmers misapply a pesticide, they are disciplined by the WSDA.

### Pesticide health risks are very low and any misuse is penalized

According to data from the Department of Health, 44 individual pesticide illness cases occurred as a result of 24 drift events in 2015. As a percentage of the total population affected by drift it was 0.0006 percent. A report by the Washington Labor Council argues that drift is becoming more common.

However, a closer look at the data shows that the chance of exposure has remained even, averaging only 0.0008 percent from

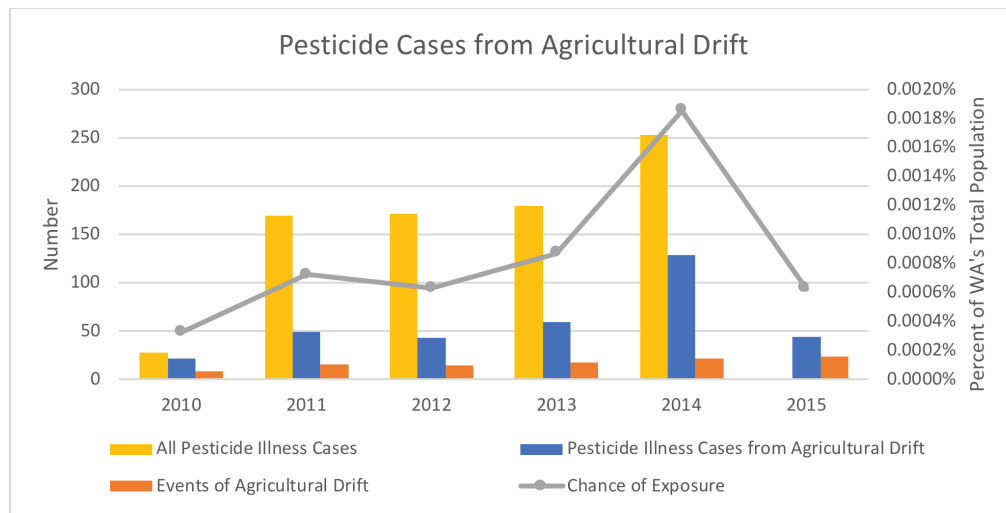
9 “State Reporting Requirements for General Use Pesticides,” by Lance Ching, Report No. 3, Hawaii Legislative Reference Bureau, 2013, at [http://lrhawaii.info/reports/legrpts/lrb/2013/act105\\_slh13.pdf](http://lrhawaii.info/reports/legrpts/lrb/2013/act105_slh13.pdf).

10 “State Pesticide Use Reporting Programs,” by Dennis Howard, Maryland Department of Agriculture, September 2013 at [http://mda.maryland.gov/Documents/State\\_Pesticide\\_Use\\_Reporting\\_Pgms.pdf](http://mda.maryland.gov/Documents/State_Pesticide_Use_Reporting_Pgms.pdf).

11 “Engrossed Second Substitute Senate Bill 6529, An Act Relating to establishing a pesticide application safety work group,” Washington State Legislature, February 6, 2018, at <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/6529-S2.E.pdf>.

12 “Washington Food Policy Forum is a symbolic and wasteful effort that targets Washington farmers,” by Madilyne Clark, Blog, Washington Policy Center, 10 February 10, 2017 at <https://www.washingtonpolicy.org/publications/detail/washington-food-policy-forum-is-a-symbolic-and-wasteful-effort-that-targets-washington-farmers>.

13 “Human Exposure to Pesticide Drift: Washington State Report,” by Dan Ford, Megan Dunn, Joe Morrison, and Catherine Willis, Columbia Legal Services, February 2017, at <http://www.columbialegal.org/sites/default/files/PesticideRptFINALWeb.pdf>.



2010 to 2015.<sup>14</sup> Closer examination of this data indicates that the spike in 2014 is due to one event where aerial drift affected 66 workers in a neighboring apple orchard.<sup>15</sup>

To put this data in to perspective, the risk associated with Washington state citizens experiencing agricultural pesticide drift is less than that of the chance of an American living to be over 100 (0.024 percent), drawing three aces in a row from a card deck without replacement (0.018 percent), and tossing “heads” 14 times in a row (0.015 percent).<sup>16</sup> It’s estimated that 99.995% of agricultural pesticide sprays occurred in Washington state without incident.<sup>17</sup>

WSDA also maintains an up-to-date compliance program that investigates pesticide events of concern including: misuse of pesticides, pesticide drift complaints, worker protection standards, improper sale or distribution, licensing, and structural pest inspection. WSDA is given the authority to assess a maximum fine up to \$7,500 and to suspend, deny, or revoke a license.<sup>18</sup>

Chris Senske, long-time advocate of pesticide application transparency and president of Senske Services said,

“The current version of SB 6529 that requires the formation of a study group heavily represented by non-agricultural entities, is better than the original bill that mandated an onerous notification and use reporting system, and gave more authority to the Department of Health over the application of agricultural pesticides.

With careful monitoring and input to the study group I think the agricultural industry can help formulate a regulatory environment that will satisfy proponents and at the same time allow growers to protect their crops.”

## Conclusion

Was the original form of Senate Bill 6529 common-sense or destructive? An understanding of the food system leads to the conclusion that this bill was extremely destructive to agriculture and also to the jobs that it provides to the communities. This destruction would have brought no benefit to workers’ health or to the food supply system.

As the new workgroup begins the task of delivering recommendations to next year’s legislature, it would do well to remember that agriculture and workers are symbiotic and need each other. Proposing legislation that makes it too costly to farm or does not adequately protect workers is bad for all of Washington.

Madi Clark is the director of Washington Policy Center’s Initiative on Agriculture.

Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

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14 Ibid.

15 “Pesticide Illness Surveillance Agricultural Drift Event Summaries (2014), DOY 334-391, Washington State Department of Health, December 2015, at <https://www.doh.wa.gov/Portals/1/Documents/4000/AgDriftPES2014.pdf>.

16 “Putting Drift in Perspective,” by Steve Savage, Washington Friends of Farms and Forests, at [http://www.wafriends.com/Changing%20The%20Conversation%202-27-17%20-%20Steve%20Savage%20Power%20Point%20\(Final\).pdf](http://www.wafriends.com/Changing%20The%20Conversation%202-27-17%20-%20Steve%20Savage%20Power%20Point%20(Final).pdf).

17 Ibid.

18 “Pesticide Enforcement Actions,” Washington State Department of Agriculture, February 2018, at <https://agr.wa.gov/pestfert/enforcementactions.aspx>.