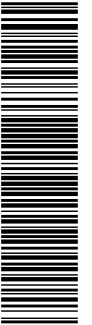


An act to amend Sections 11531, 12114, 12811.5, 12824, 12825, 12841, 12841.1, 12841.4, 12842, 12847, 12999.4, 13000, 14006.5, and 14009 of the Food and Agricultural Code, and to amend Section 21080 of the Public Resources Code, relating to pesticides.

SECURED
COPY



THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 11531 of the Food and Agricultural Code is amended to read:

11531. Except as provided in Chapter 6 (commencing with Section 12001), this division does not apply to any person while engaged in any of the following:

(a) ~~Any~~ An activity that is defined as structural pest control and required to be licensed under Chapter 14 (commencing with Section 8500) of Division 3 of the Business and Professions Code.

(b) Preservative treatment of fabrics or structural materials.

~~(c) Household or industrial sanitation services.~~

(c) Sanitation services for collection, disposal, and treatment of wastewater, refuse, or sewage.

~~(d) Seed treatment which that is incidental to such the person's regular business.~~

(e) Live capture and removal or exclusion of vertebrate pests, bees, or wasps without the use of pesticides. Vertebrate pests include, but are not limited to, bats, raccoons, skunks, ~~and squirrels, but do not include~~ mice, rats, ~~or and~~ pigeons. This section does not exempt a person from the provisions of Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code.

(f) Pool cleaning services, unless the person is selling, applying, using, or distributing a restricted material.

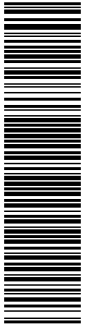
SEC. 2. Section 12114 of the Food and Agricultural Code is amended to read:

12114. (a) Each licensed pest control dealer, and each person who is required to be licensed as a pest control dealer pursuant to Section 12101, shall maintain at ~~his or her~~ their principal place of business the records of its purchases, sales, and distributions of pesticides into or within this state, including those of its branch locations, for four years. Each dealer shall also maintain the pesticide broker or pest control dealer license number of any pesticide broker or pest control dealer from whom the dealer purchased pesticides registered by the director and labeled for agricultural use. The records shall be available for audit by the director.

(b) Each licensed pest control dealer, and each person who is required to be licensed as a pest control dealer pursuant to Section 12101, shall report quarterly to the director the total dollars of sales and total pounds or gallons sold into or within this state of each pesticide ~~labeled for agricultural use, for all sales~~ subject to Sections 12841 and 12841.1. The quarterly report shall be in the form prescribed by the director and shall include information from the dealer's licensed branch locations, if any, and any other information specified on the form or required by the director. The report shall include a certification, under penalty of perjury, that the information contained in the report is true and correct. The report shall accompany payment of assessments required by Sections 12841 and 12841.1.

SEC. 3. Section 12811.5 of the Food and Agricultural Code is amended to read:

12811.5. The director may rely ~~upon~~ on any evaluations of previously submitted data to determine whether to accept an application for registration of a new pesticide product, an amendment to the registration of a registered pesticide product, or to maintain the registration of a registered pesticide product regardless of the ownership of the data previously ~~evaluated~~. evaluated, if the previously submitted data fulfills



current data requirements. However, effective January 1, 2006, applicants will be subject to the following provisions:

(a) (1) If an applicant for registration of a pesticide product, or an amendment to the registration of a registered pesticide product, including a registrant that desires to maintain its registration of a registered pesticide product after the director makes a formal ~~reevaluation~~ request for additional data, data pursuant to reevaluation or Section 12824, does not submit its own data to fulfill a current data requirement imposed by the director and ~~relies upon on~~ data that the applicant does not own or have written permission to ~~rely upon on~~ that was submitted to the director by another entity after January 1, 1991, and meets the three criteria set forth in this subdivision, the applicant ~~must shall~~ either ~~(i) (A)~~ obtain written permission from the data owner to rely on the data, ~~(ii) (B)~~ formulate or obtain its product from a source that has data authorization from the data owner, or a source that complies with subdivision (c), or ~~(iii) (C)~~ if the data meets the criteria set forth in ~~paragraphs (1), (2), and (3), subparagraphs (A), (B), and (C) of paragraph (2),~~ irrevocably offer to pay the data owner a share of the cost of producing the data and comply with the provisions of subdivision (d). The director may ~~rely upon on~~ data submitted ~~prior to before~~ January 1, 1991, or that does not meet the criteria set forth in ~~paragraphs (1), (2), and (3) subparagraphs (A), (B), and (C) of paragraph (2)~~ to support any application or comply with any formal reevaluation request for additional data, without permission from the data owner. An offer to pay, and a payment pursuant to that offer, shall only be required as to data not submitted by the applicant that meets the criteria set forth in ~~paragraphs (1), (2), and (3). To subparagraphs (A), (B), and (C) of paragraph (2).~~

(2) ~~To~~ be eligible for cost sharing pursuant to this subdivision, the data ~~must~~ shall meet all of the following requirements:

(+)

(A) The data was required by the director in order to obtain, amend, or maintain the data owner's California registration or registrations for uses covered by the application, amendment, or formal ~~reevaluation~~ request for additional data: data pursuant to reevaluation or Section 12824.

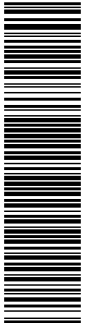
(2)

(B) There has been no arbitration award, data compensation, or data cost-sharing agreement pertaining to data supporting the product at the federal level pursuant to Section 3(c)(1) (F)(iii) or 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136a(c)(1)(F)(iii) or 136a(c)(2)(B)), or, if an award or agreement exists, the use of data in California was excluded from compensation or cost sharing on its face.

(3)

(C) The data that fulfills a current requirement was submitted to the United States Environmental Protection Agency or the department no more than 15 years ~~prior to before~~ the date of the applicant's California registration, application, or amendment or the formal reevaluation request for additional data to which the registrant's reliance responds, provided that as to data submitted to the department as of August 1, 2005, in support of the first registration of a product, the applicable period shall be 17 years from the date of submission to the United States Environmental Protection Agency.

(b) If the director previously imposed a specific documented data requirement after January 1, 1991, to obtain, amend, or maintain the California registration of a



pesticide product substantially similar to the applicant's product and that data requirement is not currently imposed in California for registration, amendment, or maintenance of the applicant's product, the applicant is further obligated to submit data to meet the requirement, obtain written permission from an owner of the data to rely ~~upon~~ on the data, formulate or obtain its product from a source that has authorization from the data owner to rely ~~upon~~ on the data or from a source that complies with subdivision (c), or, if the data meets the criteria set forth in paragraphs (1), (2), and (3), irrevocably offer to pay the data owner a share in the cost of producing the data and comply with ~~the provisions of~~ subdivision (c). An offer to pay, and a payment pursuant to that offer, shall only be required as to data not submitted by the applicant that meets the criteria set forth in paragraphs (1), (2), and (3). To be eligible for cost sharing pursuant to this subdivision, the data ~~must~~ shall meet all of the following requirements:

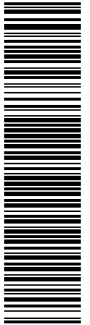
(1) The data met a specific, documented requirement of the director to obtain, amend, or maintain the California registration of the data owner's pesticide product for a use covered by the applicant's application or amendment.

(2) There has been no arbitration award, data compensation, or data cost-sharing agreement pertaining to data supporting the product at the federal level pursuant to Section 3(c)(1)(F)(iii) or 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136a(c)(1)(F)(iii) or 136a(c)(2)(B)), or, if an award or agreement exists, the use of the data in California was excluded from compensation or cost sharing on its face.

(3) The data was submitted to the U.S. Environmental Protection Agency or Department of Pesticide Regulation by the data owner after January 1, 1991, and no more than 15 years ~~prior to~~ before the date of the applicant's California application for registration or amendment or the response to a formal specific document data requirement to which the registrant's reliance responds, provided that as to data submitted to the department as of August 1, 2005, in support of the first registration of a product, the applicable period shall be 17 years from the date of submission to the U.S. Environmental Protection Agency.

(c) An applicant may formulate its product from a source that does not have data authorization ~~provided if~~ that source has submitted data to support the product or makes or has made an irrevocable offer to pay the data owner a share of the cost of producing the data required pursuant to subdivision (a) or (b) for the applicant's product and complies with or has made payment in accordance with ~~the provisions of~~ subdivision (d). ~~In the event that~~ If the source has already reached a data compensation or cost-sharing agreement or there has been an arbitration award under the Federal Insecticide, Fungicide, and Rodenticide Act (commencing at 7 U.S.C. Sec. 136) that excludes the right to rely on the data to satisfy the California requirement on its face, the source ~~must~~ shall make or have made a new irrevocable offer to pay a share of the cost of producing that data to support the applicant's product in California and comply with ~~the provisions of~~ subdivision (d).

(d) (1) If an applicant is required to offer to pay a share in the cost of producing the data pursuant to subdivision (a) or (b), or if a source of product makes an offer pursuant to subdivision (c), the applicant or source ~~must~~ shall submit to the data owner upon application to the department an irrevocable offer to pay the data owner a share in the cost of producing the data and to comply with regulations promulgated under



this subdivision to determine the amount and terms, if the parties cannot agree. If a data owner for which cost sharing is required under subdivision (a) or (b) cannot be identified from information readily available to the applicant, the applicant's obligation under subdivision (a) or (b) will be absolved if the data owner does not identify ~~himself or herself~~ themselves to the applicant within 12 months after registration of the pesticide product. If within 12 months of registration, the data owner identifies ~~himself or herself~~ themselves to the applicant and the applicant has not already made an irrevocable offer to pay to the data owner, or the applicant's source of product has not made an offer pursuant to subdivision (c), the applicant ~~must~~ shall do so promptly. In either event, the specific terms and amount of payments to be made shall be fixed by agreement between the applicant and the data owner, but determination of those amounts and terms shall not delay approval of the applicant's application.

~~If~~

(2) If agreement cannot be reached about the terms and amount of payment required by this section at any time more than 90 days after issuance of an irrevocable offer to pay, either the applicant, ~~source~~ source, or data owner may initiate, or with the consent of all parties, join a proceeding under the Federal Insecticide, Fungicide, and Rodenticide Act (commencing at 7 U.S.C. Sec. 136), pursuant to regulations promulgated by the director pursuant to this ~~statute~~ section. The purpose of this proceeding shall be to determine the amount due under this section. The director shall promulgate those regulations as emergency regulations within 60 days of the enactment of the bill that enacts this section. The regulations shall provide all of the following:

~~(1)~~

(A) Allow the proceeding authorized by this subdivision, upon mutual agreement of the parties, to be consolidated with dispute resolution under the Federal Insecticide Fungicide and Rodenticide Act (commencing at 7 U.S.C. Sec. 136).

~~(2)~~

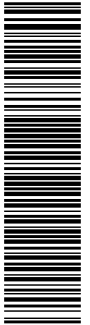
(B) Require that the decisionmaker consider, among other factors, that the data owner's exclusive right to sell the pesticide resulted in the data owner recovering all or part of the costs of generating the data.

~~(3)~~

(C) Require that the parties to the proceeding share equally in the payment of the expenses thereof.

(e) If a data owner fails to participate in a procedure for reaching an agreement or in a proceeding as required by subdivision (d), or fails to comply with the terms of an agreement or decision conducted under subdivision (d), then that data owner forfeits ~~his or her~~ their right to cost recovery as a result of the use of the data at issue.

(f) If the director finds that an applicant has failed to make an offer to pay as required under subdivision (a) or (b), or if its source of product has failed to make an offer pursuant to subdivision (c), or if an applicant or its source of product has failed to participate in a proceeding for reaching an agreement, ~~or~~ has refused to participate in a proceeding pursuant to subdivision (d), or has failed to comply with an agreement or to comply with an order, or to pay an award resulting from that proceeding, the director shall cancel the registration of the pesticide product in support of which the data was used in accordance with ~~the provisions of~~ subdivision (g), notwithstanding ~~the provisions of~~ Section 12825.



(g) If the applicant subject to subdivision (a) or (b) fails to comply with the provisions of this article, the data owner shall notify the director of the specific provision of noncompliance and provide proof of notification to the applicant of its claim of noncompliance. All parties shall have 30 days from the date of receipt of notification by the director to submit written evidence or arguments to the director regarding the claim and any defenses thereto. The director shall provide a written finding within 60 days of the deadline for submission as to the claim and the resulting consequences.

(h) ~~No~~ A hearing or live testimony shall not be conducted under subdivision (g) and this proceeding shall not be used as mechanism to prevent or delay the registration or payment for cost sharing as determined by this article. The finding of the director shall be final and conclusive, except that any party aggrieved by such a finding may seek review within 30 days of the finding pursuant to Section 1094.5 of the Code of Civil Procedure.

(i) In lieu of seeking a determination by the director and cancellation of the registration pursuant to subdivision (f), the data owner may bring an action in any California court of competent jurisdiction against the applicant to enforce the obligations of that party set forth in the provisions of this section.

(j) ~~No cost~~ Cost sharing as provided in subdivisions (a), (b), and (c) shall not be required to support an application for annual renewal of a pesticide product registration, provided this provision shall not authorize renewal of a product registered ~~prior to~~ before the effective date of this section if that registration is declared to have been unlawfully issued by a court of competent jurisdiction.

(k) The Department of Pesticide Regulation shall make available in the public domain its index of data submitted in support of registration applications, the ownership of that data, and the date it was submitted to California.

SEC. 4. Section 12824 of the Food and Agricultural Code is amended to read:

12824. (a) The director shall endeavor to eliminate from use in the state any pesticide that endangers the agricultural or nonagricultural environment, is not beneficial for the purposes for which it is sold, or is misrepresented. In carrying out this responsibility, the director shall develop an orderly program for the continuous evaluation of all pesticides actually registered.

~~Before~~

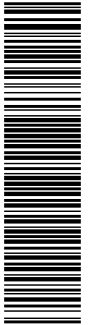
(b) Before a substance is registered as a pesticide for the first time, there shall be a thorough and timely evaluation in accordance with this section. Appropriate restrictions may be placed ~~upon~~ on its ~~use~~ use, including, but not limited to, limitations on quantity, area, and manner of application. All pesticides for which renewal of registration is sought also shall be evaluated in accordance with this section.

~~The~~

(c) The director may establish specific criteria to evaluate a pesticide with regard to the factors listed in Section 12825. The department may establish performance standards and tests that are to be conducted or financed, or both conducted and financed, by the registrants, applicants for registration, or parties interested in the registration of those pesticides.

(d) Each pesticide registrant or applicant shall, upon request of the director, submit any data determined by the director to be necessary to carry out this section.

SEC. 5. Section 12825 of the Food and Agricultural Code is amended to read:



12825. (a) Pursuant to Section 12824, the director, after a hearing, may cancel the registration of, or refuse to register, any pesticide: a pesticide if any of the following conditions apply:

(a) That has demonstrated serious uncontrollable adverse effects either within or outside the agricultural environment.

(1) The pesticide has significant adverse environmental effects for which there is no feasible mitigation available.

(b)

(2) The use of which the pesticide is of less public value or greater detriment to the environment than the benefit received by its use.

(c) For which there is

(3) There is a reasonable, effective, and practicable alternate material or procedure for the pesticide that is demonstrably less destructive to the environment.

(d) That, when

(4) The pesticide, when properly used, is detrimental to vegetation, except weeds, to domestic animals, or to the public health and safety.

(e) That is

(5) The pesticide is of little or no value for the purpose for which it is intended.

(f) Concerning which any false

(6) The registrant or their agent makes or implies a false or misleading statement is made or implied by the registrant or his or her agent, concerning the pesticide, either verbally or in writing, or in the form of any advertising literature. literature, for the purpose of meeting any registration requirement under this division, or that is otherwise related in any way to the pesticide.

(g) For which the

(7) The director determines that the registrant has failed to report an adverse effect or risk for the pesticide as required by Section 12825.5.

(h)

(8) If the director determines that the registrant has failed to comply with the requirements of a reevaluation or to submit the data required as part of the reevaluation of the registrant's product. product or pursuant to Section 12824.

(i) That is

(9) The pesticide is required to be registered pursuant to the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.) and that is not so registered.

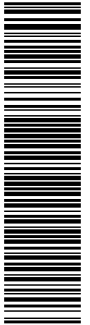
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(b) In making a determination pursuant to this section, the director may require those practical demonstrations that are necessary to determine the facts.

SEC. 6. Section 12841 of the Food and Agricultural Code is amended to read:

12841. (a) It is unlawful for a person to sell for use in this state any pesticide products that have been registered by the director for which the mill assessment established by this article, and the regulations adopted pursuant to it, is not paid at the times specified in Section 12843.

(b) Except as provided in subdivision (d), every person who sells for use in this state a pesticide product that has been registered by the director shall pay to the director the applicable assessment. Those sales expressly include all sales made electronically, telephonically, or by any other means that result in a pesticide product being shipped to or used in this state. There is a rebuttable presumption that pesticide products that



are sold or distributed into or within this state by any person are sold or distributed for use in this state.

(c) ~~(1)~~ Upon application of a registrant, the director shall determine whether a fertilizer or paper product is used as a carrier for a pesticide, and is sold in combination, and whether the mill assessment under this article shall be on the pesticide value only, when the product is designed, developed, and manufactured, and sold primarily for other than a pesticide use. If the director finds that the combination product has such a major component and is designed, developed, manufactured, and sold primarily for other than a pesticide use, the assessment provided by this article shall be paid on the equivalent percentage of the sales price of the active ingredients of the pesticide product. The director shall establish this percentage of the sales price. The percentage shall be the ratio of that portion of the sales price attributable to the pesticide portion to the total sales price of the combination product.

~~(2) For purposes of this section, "active ingredient" means any active ingredient that is required to be stated on the label on any registered pesticide under Section 12883.~~

(d) Assessments provided for in this article for sales of registered pesticides that are sold for use in this state shall be paid by the ~~registrant except as follows:~~ person or entity that first sold the pesticide for use in this state.

~~(1) In those cases where the registrant did not first sell the pesticide into or within this state or have actual knowledge, at the time of its sale, that the pesticide would be sold for use in this state, the assessment shall be paid by the licensed pesticide broker, licensed pest control dealer, or other person who first sold the pesticide for use in this state.~~

~~(2) A person is not required to pay an assessment on registered products that are labeled only for use in further manufacturing or formulating of pesticides.~~

(e) It has been and continues to be the intent of the Legislature that this division requires the department to register all pesticides ~~prior to~~ before their sale for use in this state and, except as otherwise provided by law, requires the department to regulate and control the use of pesticides in accordance with this division. Except as provided in Section 12841.1, the department shall continue to collect the assessment as provided in this article at the same rate on all registered agricultural and registered nonagricultural pesticides.

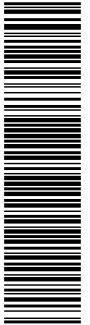
(f) (1) The mill assessment shall be paid at the following rates per dollar of sales for all sales of pesticides for use in this state:

~~(A) From January 1, 1998, to March 31, 1999, inclusive, the rate shall be 15.15 mills (\$0.01515) plus any additional assessment authorized by Section 12841.1.~~

~~(B) From April 1, 1999, to December 31, 2002, inclusive, the rate shall be 17.5 mills (\$0.0175) plus any additional assessment authorized by Section 12841.1.~~

~~(C) From January 1, 2003, to December 31, 2003, inclusive, the rate shall be 17.5 mills (\$0.0175).~~

~~(D) For all transactions on or after January 1, 2004, the actual rate shall be that set by regulations adopted by the director at a rate adequate to support the department's annual expenditures authorized in the annual Budget Act and provide a prudent reserve. The rate set by the director shall be no greater than 21 mills (\$0.021). However, if regulations are not adopted before a payment is due, payment shall be made at the rate~~



of 17.5 mills (\$0.0175), and, upon adoption of regulations, payment of any additional amount due shall be made.

(A) From July 1, 2024, to June 30, 2025, the rate shall be 26 mills (\$0.026) per dollar sales of all sales of registered pesticides for use in this state plus any additional assessment authorized by Section 12841.1.

(B) From July 1, 2025, to June 30, 2026, the rate shall be 27.5 mills (\$0.0275) per dollar sales of all sales of registered pesticides for use in this state plus any additional assessment authorized by Section 12841.1.

(C) From July 1, 2026, to June 30, 2027, the rate shall be 28.6 mills (\$0.0286) per dollar sales of all sales of registered pesticides for use in this state plus any additional assessment authorized by Section 12841.1.

(D) Beginning on July 1, 2027, after conducting public workshops, the director may adopt regulations setting one fixed rate adequate to support the department's annual expenditures authorized in the annual Budget Act and to provide a prudent reserve. Any rate set by the director shall be no greater than 33.9 mills (\$0.0339). However, if regulations are not adopted before a payment is due, payment shall be made at the rate of 28.6 mills (\$0.0286), and, upon adoption of regulations, payment of any additional amount due shall be made.

(2) The regulations adopted pursuant to this section, or any amendment thereto, shall be adopted by the director in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, the adoption, amendment, readoption, or repeal of these regulations shall be considered by the Office of Administrative Law as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other provision of law, the regulations shall remain in effect until amended by the director. The director shall make available to the public, upon the adoption of an emergency regulation establishing a new rate, the information upon which the director has calculated, based, or determined the new rate.

(g) The revenue collected pursuant to this section shall be deposited ~~in~~ into the Department of Pesticide Regulation Fund and distributed as follows:

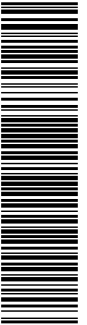
(1) Notwithstanding Sections 2282 and 12784, the director shall pay, in accordance with the criteria set forth in Section 12844, the following amounts to the counties as reimbursement for costs incurred by the counties in the administration and enforcement of Division 6 (commencing with Section 11401), this chapter, Chapter 3 (commencing with Section 14001), Chapter 3.4 (commencing with Section 14090), and Chapter 3.5 (commencing with Section 14101):

(A) From January 1, 1998, to March 31, 1998, inclusive, five-eighths of the money received during that period pursuant to this section.

(B) From April 1, 1998 to June 30, 2004, an amount equal to the revenue derived from 6 mills (\$0.006) per dollar of sales for all pesticide sales for use in this state.

(C) Beginning July 1, 2004, an amount equal to the revenue derived from 7.6 mills (\$0.0076) per dollar of sales for all pesticide sales for use in this state.

(2) All funds not otherwise distributed pursuant to this subdivision shall remain in the Department of Pesticide Regulation Fund and shall be available for expenditure, upon appropriation, to support the department's operations.



(h) For purposes of this section, “active ingredient” means any active ingredient that is required to be stated on the label on any registered pesticide under Section 12883.

SEC. 7. Section 12841.1 of the Food and Agricultural Code is amended to read:

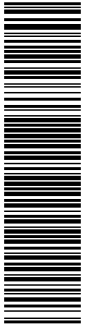
12841.1. (a) The director may collect an assessment, in addition to the mill assessment collected pursuant to Section 12841, for all pesticide sales for use in this state except for sales for use in this state of pesticides labeled solely for home, industrial, or institutional use. The director may only collect up to an additional ~~three-fourths mill (\$0.00075)~~ 1.04 mills (\$0.00104) per dollar of sales, in addition to the rate established pursuant to Section 12841, if necessary to fund, or augment the funding for, an appropriation to the Department of Food and Agriculture to provide pesticide consultation to the department pursuant to Section 11454.2. The necessity of this additional assessment shall be determined by the Secretary of Food and Agriculture, in consultation with the director, on an annual basis after consideration of all other revenue sources, including any reserves, ~~which that~~ that may be appropriated for this purpose. The secretary’s written determination, including a request for a specified additional assessment and the basis for that request, shall be provided to the director by a time and in a manner prescribed by the director.

(b) The revenue collected pursuant to this section shall be deposited ~~monthly in~~ into a separate account in the Department of Food and Agriculture Fund. These revenues shall be expended only by the Department of Food and Agriculture, upon appropriation, to provide consultation to the department pursuant to Section 11454.2. ~~No funds may~~ Funds shall not be expended ~~prior to before~~ the execution of a memorandum of understanding pursuant to subdivision (b) of Section 11454.2. The consultation activities to be undertaken by the Department of Food and Agriculture are limited solely to those specifically authorized in the memorandum of understanding executed pursuant to Section 11454.2. These funds ~~may shall~~ shall not be expended for scientific risk assessment activities. The department shall be reimbursed from the Department of Food and Agriculture Fund for the department’s revenue collection activities. If the director determines that a person is entitled to a refund of mill assessment funds that were collected pursuant to this section, the director shall inform the Secretary of Food and Agriculture of the amount of the refund due, which shall be reimbursed from the Department of Food and Agriculture Fund.

SEC. 8. Section 12841.4 of the Food and Agricultural Code is amended to read:

12841.4. (a) Every registrant of any production agricultural- or structural-use pesticide product sold for use in this state that is packaged in rigid, nonrefillable, high-density polyethylene (HDPE) containers of 55 gallons or less shall establish a recycling program, or demonstrate participation in a recycling program to ensure HDPE containers are recycled. Container recycling ~~must~~ shall comply with the American National Standards Institute American Society of Agriculture and Biological Engineers Standard S596, entitled Recycling Plastic Containers from Pesticides and Pesticide-Related Products, as published in February 2006. The records required by these standards shall be maintained for ~~three~~ four years and shall be subject to audit by the director.

(b) ~~Any A~~ Any registrant who is required to establish or participate in a recycling program pursuant to this section shall provide to the director, at least annually, a document certifying that this requirement has been met.



(c) (1) The director may adopt regulations to carry out the purposes of this section. Upon a federal pesticide container recycling program being adopted, the director may adopt regulations to conform to the federal program.

(2) It is the intent of the Legislature in enacting this section that any regulatory standards adopted by the department shall be at least as stringent as those standards referred to in subdivision (a).

(d) ~~Commencing September 1, 2010, the~~ The department shall estimate a recycling rate for pesticide containers and propose suggestions for program improvements and post this information annually on its ~~Internet Web site.~~ internet website.

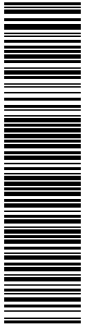
SEC. 9. Section 12842 of the Food and Agricultural Code is amended to read:
12842. Every person who sells for use in this state any pesticide products that have been registered by the director shall maintain in this state, or with the director's permission at another location, an accurate record of all pesticide transactions ~~subject to assessment~~ for four years. The records are subject to audit by the director and shall clearly demonstrate proof of payment of all applicable assessments for each registered pesticide product sold for use in this state.

SEC. 10. Section 12847 of the Food and Agricultural Code is amended to read:
12847. Sales invoices for pesticides first sold into or within this state ~~by a registrant, pesticide broker, pest control dealer, or other person subject to this article~~ shall show that the assessment specified in Sections 12841 and 12841.1 will be paid by the ~~registrant, broker, dealer, or person, respectively.~~ person or entity that first sold the pesticide for use in the state. All other sales invoices for pesticides sold into or within this state, except retail sales of those nonagricultural pesticides labeled only for home, industrial, or institutional ~~use~~ use, shall show as a comment on the invoice that the assessment will be paid, and may show an amount or rate that represents the assessment. However, only the person who actually will pay the assessment may show the amount or rate of the assessment as a line item on the sales invoice.

SEC. 11. Section 12999.4 of the Food and Agricultural Code is amended to read:

12999.4. (a) In lieu of civil prosecution by the director, the director may levy a civil penalty against a person violating subdivision (d) or (e) of Section ~~11792 or 11792~~, Sections 12101, 12101.5, 12114, 12115, 12116, 12581, 12603, 12671, 12992, and 12993, Chapter 10 (commencing with Section 12400) of Division 6, Article 4.5 (commencing with Section 12841), Section 13186.5, Chapter 7.5 (commencing with Section 15300), or the regulations adopted pursuant to those provisions, and Sections 6560, 6562, 6564, 6568, 6574, 6576, and 6577 of Title 3 of the California Code of Regulations, of not more than fifteen thousand dollars (\$15,000) for each violation.

(b) Before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. Before the hearing, the person shall be given an opportunity to review the director's evidence. At the hearing,



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the person shall be given the opportunity to present evidence on their own behalf. If a hearing is not timely requested, the director may take the action proposed without a hearing.

(c) If the person against whom the director levied a civil penalty requested and appeared at a hearing, the person may seek review of the director's decision within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) After the exhaustion of the review procedure provided in this section, the director, or the director's representative, may file a certified copy of a final decision of the director that directs the payment of a civil penalty and, if applicable, any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. Pursuant to Section 6103 of the Government Code, the clerk of the superior court shall not charge a fee for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(e) Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department, upon appropriation, in administering this division and Division 6 (commencing with Section 11401).

SEC. 12. Section 13000 of the Food and Agricultural Code is amended to read:

13000. (a) Except as provided in subdivisions (b) and (c), an action brought pursuant to this article shall be commenced by the director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney, as the case may be, ~~within two~~ three years of the occurrence of the violation.

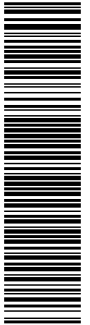
(b) When a commissioner submits a completed investigation to the director for action by the director or the Attorney General, the action shall be commenced within one year of that submission. However, ~~nothing in this subdivision precludes~~ does not preclude the director from returning the investigation to the commissioner for action to be commenced by the commissioner, the district attorney, the city prosecutor, or the city attorney, as provided in subdivision (a).

(c) (1) An action brought by the director to collect unpaid mill assessments and delinquent fees required by Article 4.5 (commencing with Section 12841) or an action brought by the director to collect civil penalties pursuant to Section 12999.4 for violations of Article 4.5 (commencing with Section 12841), Section 12992, Section 12993, or Section 12995 shall be commenced within four years of the occurrence of the violation. ~~violation, except as provided in paragraph (2).~~

(2) An action brought by the director pursuant to Section 12999.4 or 12998 for violations of Article 4.5 (commencing with Section 12841) or Section 12992, 12993, or 12995 that are discovered during the course of an audit performed pursuant to Section 12842 shall be commenced within two years from the date of audit completion and may be brought for a violation occurring within four years of the commencement of the audit.

SEC. 13. Section 14006.5 of the Food and Agricultural Code is amended to read:

14006.5. (a) Except as provided in Section 14006.6, no a person shall not use or possess any a pesticide designated as a restricted material for any agricultural use except under a written permit of the commissioner. No A permit shall not be issued



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for any restricted material for use in any manner other than pursuant to its registration without the approval of the director. In addition, ~~no~~ a permit shall not be granted if the commissioner determines that ~~the provisions~~ paragraph (1), (2), or (3) of subdivision (a), (b), or (c) (a) of Section 12825 would be applicable to the proposed use.

~~Before~~

(b) ~~Before~~ issuing a permit for ~~any pesticide~~ a pesticide, the commissioner shall consider ~~local conditions~~ conditions, including, but not limited to, all of the following:

(a)

(1) Use in vicinity of schools, dwellings, hospitals, recreational areas, and livestock enclosures.

(b)

(2) Problems related to heterogeneous planting of crops.

(c)

(3) Applications of materials known to create severe resurgence or secondary pest problems without compensating control of pest species.

(d)

(4) Meteorological conditions for use.

(e)

(5) Timing of applications in relation to bee activity.

(f)

(6) Provisions for proper storage of pesticides and disposal of containers.

~~Each~~

(c) ~~Each~~ permit issued for any pesticide shall include conditions for use in writing.

SEC. 14. Section 14009 of the Food and Agricultural Code is amended to read:

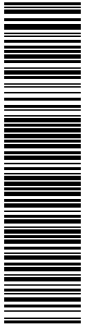
14009. (a) ~~Any~~ An interested person may request the commissioner to review ~~his or her~~ their action in issuing, refusing, revoking, suspending, or conditioning a permit to use or possess a restricted material. The request for review of the commissioner's action shall be limited to the issues described in subdivision (d). The commissioner shall review the request and issue a written decision in response to the request to review within 10 days of receipt of the request, or as soon as practicable. The commissioner may affirm, modify, or cancel the permit action reviewed. A directly affected person may thereafter appeal to the director to review the commissioner's ~~action~~ action within 30 days of the date of receiving the commissioner's written decision. For purposes of this section, an appellant is directly affected by the permit action when the appellant establishes that their residence, crop, property, or water supply point source lies within one-half mile of the site described in the permit. A moveable campsite, trailer, or home, or other portable property temporarily located in proximity to the site, does not qualify the appellant as being directly affected by the permit action.

(b) The commissioner and director shall conduct each review in an expeditious manner so that needed pest control measures are not adversely affected.

(c) Each request for ~~review~~ review, limited to the issues described in subdivision (d), shall be submitted in writing to the commissioner by the person requesting the review and shall include all of the following:

(1) The location of persons, property, or areas that would be affected and the location of property to be treated.

(2) The name of the restricted material involved.



(3) The name and address of the person in charge of the property to be treated, if different from the person filing the request for review.

(4) Any other information that the person filing the request for review or the commissioner determines to be relevant.

(d) In an appeal of a commissioner's action to the director, the issues are limited to any of the following:

(1) Whether the proposed permit use is consistent with applicable pesticide label restrictions and applicable regulations.

(2) Whether the commissioner properly considered the provisions of Section 14006.5.

(3) Whether the commissioner abused ~~his or her~~ their discretion in issuing, refusing, revoking, or conditioning the permit.

(e) The director shall act on these appeals within 10 days of receipt thereof or as soon thereafter as is practicable. The director may stay the operation of a permit until ~~his or her~~ their review is complete.

~~(f) (1) Prior to conducting a public review, the director shall notify directly affected persons at least 72 hours in advance of the location and time of the public review.~~

~~(2)~~

~~(f) (1) Before acting on an appeal, the director shall, in a specified location open to the public, review the shall make publicly available all of the information provided to him or her them as specified in this section if requested to do so in writing by any interested person.~~

~~(3) The director~~

~~(2) At any time before acting on an appeal, the director may request additional testimony or other evidence specified in this section at the public review from interested persons.~~

(g) Judicial review of any decision by the director pursuant to this section shall be pursuant to Section 1094.5 of the Code of Civil Procedure. Review shall be limited to whether the proposed permit use is consistent with applicable pesticide label restrictions and regulations and whether the director abused ~~his or her~~ their discretion.

SEC. 15. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

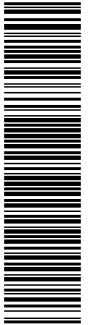
(b) This division does not apply to any of the following activities:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.



(5) Projects ~~which~~ that a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies ~~which~~ that the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) All classes of projects designated pursuant to Section 21084.

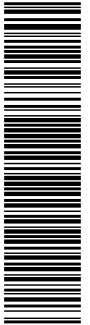
(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities. For purposes of this paragraph, "highway" shall have the same meaning as defined in Section 360 of the Vehicle Code.

(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(12) Facility extensions not to exceed four miles in length ~~which~~ that are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(13) A project for the development of a regional transportation improvement program, the state transportation improvement program, or a congestion management program prepared pursuant to Section 65089 of the Government Code.

(14) ~~Any A project or portion thereof of a project~~ Any project or portion thereof of a project located in another state ~~which~~ that will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.



(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project ~~which~~ that was not analyzed as a significant effect on the environment in the plan or other written documentation required by Section 21080.5 is subject to this division.

(16) Approval by the Department of Pesticide Regulation of a pesticide emergency exemption pursuant to Section 136p of Title 7 of the United States Code.

(c) If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

(1) There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.

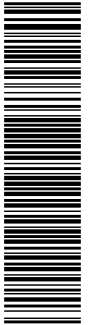
(d) If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) (1) For ~~the~~ purposes of this section and this division, substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.

(2) Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

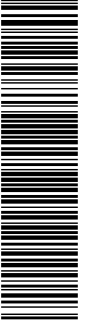
(f) As a result of the public review process for a mitigated negative declaration, including administrative decisions and public hearings, the lead agency may conclude that certain mitigation measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, ~~prior to before~~ approving the project, may delete those mitigation measures and substitute for them other mitigation measures that the lead agency finds, after holding a public hearing on the matter, are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. If those new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures shall not constitute an action or circumstance requiring recirculation of the mitigated negative declaration.

(g) ~~Nothing in this~~ This section shall does not preclude a project applicant or any other person from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set aside by either an administrative body or court



was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



LEGISLATIVE COUNSEL'S DIGEST

Bill No.
as introduced, _____.
General Subject: Pesticides.

(1) Existing law makes it unlawful for a person to advertise, solicit, or operate as a pest control business, unless the person has a valid pest control business license issued by the Director of Pesticide Regulation and has registered with the county agricultural commissioner. Existing law exempts from these provisions persons engaged in specified activities, including household and sanitation services.

This bill would exempt persons engaged in sanitation services for the collection, disposal, and treatment of wastewater, refuse, or sewage, rather than household and sanitation services, and would also exempt persons engaged in pool cleaning services, unless the person is selling, applying, using, or distributing a restricted material, or engaged in the live capture and removal or exclusion of mice, rats, and pigeons.

(2) Existing law requires a licensed pest control dealer to report quarterly to the director the total dollars of sales and total pounds or gallons sold into or within this state of each pesticide labeled for agricultural use that are subject to the assessments described below.

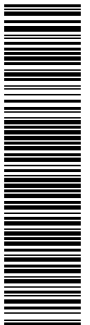
This bill would require the above-described report to instead include each pesticide subject to the assessments described below, rather than only those pesticides labeled for agricultural use.

(3) Existing law requires the director to endeavor to eliminate from use in the state specified pesticides, and in carrying out this responsibility, to develop an orderly program for the continuous evaluation of all pesticides actually registered, as specified.

This bill would require each pesticide registrant or applicant to, upon request of the director, submit any data determined by the director to be necessary to carry out those requirements.

(4) Existing law requires every person who sells a pesticide product for use in this state that has been registered by the director to pay an assessment on all sales of the pesticide product, and requires the director to establish by regulation a mill assessment rate, not to exceed \$0.021. Existing law authorizes the director to collect an additional assessment of up to \$0.00075 per dollar of sales for all pesticide sales for use in this state, except as specified, if necessary to fund, or augment the funding for, an appropriation to the Department of Food and Agriculture to provide pesticide consultation to the Department of Pesticide Regulation.

This bill would instead require the assessment to be paid by the person or entity that first sold the pesticide for use in this state. The bill would establish, beginning July 1, 2024, a specified assessment rate for pesticide products and would require the rate to increase until July 1, 2027, after which the bill would authorize the director, after conducting public workshops, to adopt regulations setting one fixed rate, adequate to support the Department of Pesticide Regulation's annual expenditures authorized in the annual Budget Act and to provide a prudent reserve that is no greater than



\$0.0339. The bill would increase the maximum amount of the additional assessment to \$0.00104 per dollar of sales.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

(5) Existing law authorizes the director, after a hearing, to cancel the registration of, or refuse to register, a pesticide if one or more specified conditions apply, including that the pesticide has demonstrated serious uncontrollable adverse effects either within or outside the agricultural environment.

This bill would revise those specified conditions, including by revising the above-described condition to instead apply when the pesticide has significant adverse environmental effects for which there is no feasible mitigation available.

(6) Existing law requires an action brought pursuant to specified pesticide provisions to be commenced by the director, the commissioner, the Attorney General, the district attorney, the city prosecutor, or the city attorney within 2 years of the occurrence of the violation.

This bill would instead require an action to be brought within 3 years of the occurrence of the violation.

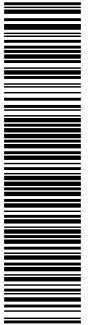
Existing law requires an action brought by the director to collect unpaid mill assessments and delinquent fees or to collect civil penalties for a violation of mill assessment requirements and other specified pesticide provisions to be commenced within 4 years of the occurrence of the violation.

This bill would require specified actions for the above-described violations that are discovered during the course of an audit to be commenced within 2 years from the date of the audit's completion and would authorize those actions to be brought for a violation occurring within 4 years of the commencement of the audit.

(7) Existing law authorizes any interested person to request the county agricultural commissioner to review their action in issuing, refusing, revoking, suspending, or conditioning a permit to use or possess a restricted material and authorizes the commissioner to affirm, modify, or cancel the permit action reviewed. Existing law authorizes a directly affected person to appeal to the director to review the commissioner's action. Existing law requires, before conducting a public review, the director to notify directly affected persons at least 72 hours in advance of the location and time of the public review.

This bill would require the directly affected person to appeal to the director within 30 days of the date of receiving the commissioner's written decision in response to the request to review. The bill would provide that an appellant is considered to be directly affected by the permit action when the appellant establishes that their residence, crop, property, or water supply point source lies within $\frac{1}{2}$ mile of the site described in the permit. The bill would delete the above-described 72-hour notice requirement for a public review.

(8) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if



it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would expressly exempt from CEQA an approval by the Department of Pesticide Regulation of a pesticide emergency exemption pursuant to specified federal laws. Because a lead agency would be required to determine whether a project qualifies for this exemption, the bill would impose a state-mandated local program.

(9) Under existing law, a violation of specified provisions of the Food and Agricultural Code relating to pest control and pesticides is a misdemeanor.

Because a violation of certain of the above provisions would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

