

Assembly Bill No. 780

CHAPTER 523

An act to amend Sections 12841 and 12841.1 of, and to add Section 12847.5 to, the Food and Agricultural Code, relating to pesticides, and making an appropriation therefor.

[Approved by Governor October 4, 2001. Filed with
Secretary of State October 5, 2001.]

I am signing Assembly Bill 780. However, due to the rapid decline in our economy and a budget shortfall of \$1.1 billion in the first three months of this fiscal year alone, I have no choice but to oppose additional General Fund spending. As a result, I am deleting the \$7 million General Fund appropriation contained in the bill.

This bill reauthorizes the pesticide mil assessment, which funds approximately 60% of the programmatic activity of the Department of Pesticide Regulation (DPR), at the current rate of 17.5 mils until June 30, 2004. I am signing this bill to maintain the current assessment rate because it does not add an additional financial burden on the regulated industries. Moreover, this action will avoid the potential for the assessment to revert to an unacceptably low level in future years.

However, I am directing the Director of DPR to bring the stakeholders together as specified by this bill to help craft a longer term solution for support of the Department.

I am committed to the continuation of California's nationally renowned pesticide regulatory program and the benefits it provides. Because DPR has sufficient funding for the current fiscal year, I believe that addressing the funding shortfall for the 2002-03 fiscal year during the budget development process would be more appropriate.

GRAY DAVIS, Governor

LEGISLATIVE COUNSEL'S DIGEST

AB 780, Thomson. Pesticide mill assessments.

(1) Until January 1, 2003, existing law requires every registrant of a pesticide product to pay the Director of Pesticide Regulation an assessment of 17.5 mills per dollar of sales for all sales by that person of registered pesticides for use in this state. Existing law further provides that effective January 1, 2003, and thereafter, the mill assessment rate would be reduced to 9 mills per dollar of sales, for all sales of pesticide for use in this state.

This bill would specify that sales made electronically, telephonically, or by other means that result in a pesticide product being shipped to or used in the state are sales. This bill would also provide that the mill assessment rate commencing January 1, 2003, to June 30, 2004, shall be 17.5 mills per dollar of sales and commencing July 1, 2004, and thereafter, shall be 9 mills per dollar of sales for all sales of registered pesticides for use in this state.

(2) Existing law also allows the Director of Pesticide Regulation, until January 1, 2003, to collect an additional mill assessment, as specified, to fund provision of pesticide consultation to the Department of Pesticide Regulation by the Department of Food and Agriculture.

This bill would allow the director to continue to collect this assessment, as specified, until July 1, 2004.

(3) The bill would also require the Department of Pesticide Regulation, with assistance from a subcommittee of the Pest Management Advisory Committee containing members from specified groups or agencies, to prepare an analysis and report on specified issues to the Legislature by January 1, 2003, the purpose of which would be to recommend a funding solution for the department that would eliminate the need to reauthorize the mill assessment on pesticide and consumer product sales every 5 years and that would preserve the accountability of the department to the entities contributing to the financing of the department.

(4) This bill would appropriate \$7,000,000 from the General Fund to the Department of Pesticide Regulation to implement the provisions of this act.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 12841 of the Food and Agricultural Code is amended to read:

12841. (a) It is unlawful for any 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 any 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:

(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) No person is 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 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) Except as provided in paragraph (2), 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 June 30, 2004, inclusive, the rate shall be 17.5 mills (\$0.0175).

(D) Effective July 1, 2004, and thereafter, the rate shall be 9 mills (\$0.009).



(2) In order to avoid the accumulation of unneeded revenues, the director shall, by the adoption of an emergency regulation pursuant to subdivision (h), set the mill assessment rate lower than the rate established in subparagraphs (A), (B), and (C) of paragraph (1) if the director determines that program needs are adequately met and that revenues collected would result in a prudent reserve in the Department of Pesticide Regulation Fund by the end of the 2001–02 fiscal year greater than two million five hundred thousand dollars (\$2,500,000). In no case shall the lower mill rate result in revenues that are less than the revenues that the rate established in subparagraphs (A) and (B) of paragraph (1) would generate if each mill was valued at one million four hundred eighty-two thousand dollars (\$1,482,000).

(g) The revenue collected from the mill assessment shall be deposited in the Department of Pesticide Regulation Fund, except as specified in Section 12841.1, 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) Beginning April 1, 1998, and thereafter, 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.

(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) Any change to the mill assessment rate established pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (f) shall be made by the adoption of an emergency regulation and shall be determined by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare. Thereafter, the regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall remain in effect for no more than four consecutive quarters. The director shall make available to the public, at least 60 days prior to the adoption of an emergency regulation establishing a new rate, the information upon which the director has calculated the new rate.



SEC. 2. Section 12841.1 of the Food and Agricultural Code is amended to read:

12841.1. (a) Between January 1, 1998, and July 1, 2004, 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 those nonagricultural pesticides labeled only for home, industrial, or institutional use. The director may only collect up to an additional three-fourths mill (\$0.00075) per dollar of sales, as part of 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 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 department in a time and manner prescribed by the director to fulfill the requirements of Section 12841, and shall be made available to the public pursuant to the requirements of subparagraph (B) of paragraph (1) of subdivision (f) of Section 12841.

(b) The revenue collected pursuant to this section shall be deposited monthly in 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 be expended prior to 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 not be expended for scientific risk assessment activities. The department shall be reimbursed from the Department of Food and Agriculture Fund for revenue collection activities.

(c) This section shall remain in effect only until July 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2004, deletes or extends that date.

SEC. 3. Section 12847.5 is added to the Food and Agricultural Code, to read:

12847.5. (a) (1) By January 1, 2003, the Department of Pesticide Regulation shall analyze the following issues and report its findings to the Legislature:



(A) The ongoing funding needs for the department to allow it to carry out its responsibilities under state statutes and regulations.

(B) The appropriate mix of general funds and special funds, including the pesticide mill assessment, to support the department’s activities.

(C) The appropriate rate of mill assessment on pesticide products that are used primarily in agricultural production and the appropriate rate for all other pesticide products.

(D) Potential improvements in the efficiency of the department’s operations, including mechanisms to share workload with the United States Environmental Protection Agency associated with requests to register pesticides for use in California.

(2) The purpose of the analysis and report shall be to recommend a funding solution for the department that will eliminate the need to reauthorize the mill assessment on pesticide and consumer product sales every five years and that will preserve the accountability of the department to the entities contributing to the financing of the department.

(b) (1) To assist the department in preparing the analysis and report required under subdivision (a), the director shall convene a subcommittee of the Pest Management Advisory Committee by January 1, 2002, that shall include, but shall not be limited to, at least two representatives from the following groups or agencies:

(A) Department of Pesticide Regulation.

(B) Environmental advocates.

(C) Consumer product manufacturers.

(D) Pesticide manufacturers.

(E) Production agriculture.

(F) Farm labor advocates.

(G) Employee unions.

(H) County agriculture commissioners.

(I) Public health advocates.

(J) Legislative staff from policy or fiscal committees.

(2) The subcommittee shall be disbanded upon completion of the report required in subdivision (a).

SEC. 4. The sum of seven million dollars (\$7,000,000) is hereby appropriated from the General Fund to the Department of Pesticide Regulation to implement this act.

