

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2816 (Muratsuchi) – As Amended March 22, 2018

[Note: This bill is doubled referred to the Assembly Environmental Safety and Toxic Materials Committee and will be heard as it relates to issues under its jurisdiction.]

SUBJECT: Pesticides: schoolsites

SUMMARY: Prohibits indoor and outdoor use of pesticides on a schoolsite, except as specified. Specifically, **this bill:**

- 1) Prohibits the indoor and outdoor use of a pesticide on a schoolsite unless a local public health officer determines that a public health emergency exists requiring emergency application of a pesticide.
- 2) Specifies that for the purposes of this bill, “pesticide” does not include any of the following:
 - a) Antimicrobial pesticides and products.
 - b) Rodent bait used in a tamper-resistant, secured container.
 - c) Ready-to-use gel formulations of insecticide applied in areas inaccessible to pupils and the general public.
 - d) Insect bait used in a tamper-resistant container, or placed in an area inaccessible to pupils and the general public.
 - e) Pesticides classified by the federal Environmental Protection Agency as exempt under Section 152.25 of Title 40 of the Code of Federal Regulations.
 - f) Boric acid and disodium octaborate tetrahydrate.
 - g) Horticultural soaps and oils containing no synthetic pesticides or synergists and exempt under Section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136w(b)).
 - h) An aerosol product exempt under Section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136w(b)) with a direct spray, in a container of 18 fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting arthropods. (outdoor use)
 - i) Activities undertaken at a school by participants in the state program of agricultural career technical education (CTE) if the activities are necessary to meet curriculum requirements. Nothing in this subdivision relieves schools participating in the state program of agricultural CTE of any duties pursuant to this section for activities that are not directly related to the curriculum requirements. (outdoor use)

- j) Agricultural uses. (outdoor use)
- 3) Specifies that if a local public health officer determines that a public health emergency exists requiring emergency application of a pesticide:
 - a) The pesticide shall not be sprayed, released, deposited, or applied indoors on the schoolsite while pupils are present or connected through the same ventilation system.
 - b) The pesticide shall not be sprayed, released, deposited, or applied outdoors on the schoolsite while pupils are located in, on, or adjacent to the area of the pesticide application.
- 4) Specifies that this bill does not abrogate the authority of county health officers, the Department of Food and Agriculture, mosquito and vector control districts, the State Department of Public Health, or other state agencies that are responsible for pest management decisions that may affect public schools in California.
- 5) Specifies that this bill does not preclude a school district from adopting or enforcing stricter pesticide use policies.
- 6) Makes a number of findings and declarations regarding children's exposure to pesticides and their negative health effects.

EXISTING LAW:

- 1) Establishes the Healthy Schools Act of 2000 (HSA) under the Education Code and Food and Agricultural Code. Defines "schoolsite" as any facility used for K-12 school purposes or for child care (including day care centers, employer- sponsored child care centers, but excludes family day care homes). The term includes the buildings or structures, playgrounds, athletic fields, vehicles, or any other area of property visited or used by students. "Schoolsite" does not include any postsecondary educational facility attended by secondary pupils or private K-12 facilities. (Education Code (EC) Section 17609)
- 2) Provides that it is the policy of the state that effective least toxic pest management practices should be the preferred method of managing pests at schoolsites, and that the state shall take the necessary steps to facilitate the adoption of effective least toxic pest management practices at schools. Expresses the intent of the Legislature to encourage appropriate training to be provided to school personnel involved in the application of a pesticide at a schoolsite. (EC Section 17610 and Food and Agricultural Code (FAC) Section 13182)
- 3) Prohibits the use of a pesticide that has been granted conditional registration, an interim registration or an experimental use permit. (EC Section 17610.1)
- 4) Requires schools to keep records for four years of all pesticides used at the schoolsite. (EC Section 17611)
- 5) Requires schools to annually provide a written notice to staff and parents with the name of all pesticide products expected to be applied at the school during the upcoming year. Requires schools to provide written notification at least 72 hours prior to any application of pesticides that was not included in the annual notification. Requires schools to post a warning sign at

each area of the schoolsite where pesticides will be applied. Requires schools to provide the opportunity for parents and staff to register to receive notification at least 72 hours prior to a pesticide application. Exempts agriculture vocational programs if the activity is necessary to meet curriculum requirements. (EC Section 17612)

- 6) Specifies that the requirements to maintain records of all pesticide use at a schoolsite for a period of four years described in (4) above and the notification requirements described in (5) above do not apply to a pesticide product deployed in the form of a self-contained bait or trap, to gel or paste deployed as a crack and crevice treatment, to any pesticide exempted from regulation by the U.S. Environmental Protection Agency (US EPA), or to antimicrobial pesticides, including hand sanitizers and disinfectants. (EC Section 17610.5)
- 7) Defines “integrated pest management,” applicable to schools and child care facilities, as a pest management strategy that focuses on long-term prevention or suppression of pest problems through a combination of techniques such as monitoring for pest presence and establishing treatment threshold levels, using non-chemical practices to make the habitat less conducive to pest development, improving sanitation, and employing mechanical and physical controls. This definition further states that pesticides that pose the least possible hazard and are effective in a manner that minimizes risks to people, property, and the environment, are used only after careful monitoring indicates they are needed according to pre-established guidelines and treatment thresholds. (FAC Section 13181)
- 8) Requires a school official to develop and post on a school’s Internet Web site an integrated pest management plan (IPM) if certain pesticides are used at a schoolsite. (EC Section 17611.5)
- 9) Requires, beginning July 1, 2016, the school designee and any person, including, but not limited to, a pest control applicator or schoolsite or school district employee, who, in the course of his or her work intends to apply a pesticide at a schoolsite, to annually complete a training course provided by the Department of Pesticide Regulation (DPR) or an agent authorized by the DPR. The training course shall include IPM and the safe use of pesticides in relation to the unique nature of schoolsites and children’s health. (EC Section 17614)
- 10) Requires, commencing July 1, 2016, any person hired to apply a pesticide at a schoolsite to complete at least a one-hour training course in integrated pest management and the safe use of pesticides in relation to the unique nature of schoolsites and children's health before applying pesticides at a schoolsite and during each subsequent licensing period in which the person applies a pesticide at a schoolsite pursuant to the HSA. Specify that the training course may be applied to his or her professional continuing education requirements required by the Structural Pest Control Board or the DPR. (EC Section 17614)
- 11) Requires the DPR to prepare a school pesticide use form to be used by licensed and certified pest control operators when they apply any pesticides at a school. (FAC Section 13186)

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS: *This bill* prohibits any pesticides to be used indoor or outdoor at schoolsites, with the exception of baits, traps, gel or pastes, and certain products classified as exempt by the

US EPA, antimicrobial products and other specified chemicals. The bill also exempts use if the local public health officer declares a public health emergency requiring the use of pesticides.

Healthy Schools Act. The HSA, established by AB 2260 (Shelley), Chapter 718, Statutes of 2000, expresses the policy of the state that the least toxic pest management practices are the preferred method of managing pests at schoolsites in order to reduce children's exposure to toxic pesticides. The HSA established a process for notifying school staff and parents or guardians of pesticide use, including through posting warning signs at schoolsites 72 hours prior to pesticide application and through an annual written notification. Schools are required to keep records of pesticide use for four years. AB 2260 also required the DPR to assist schools in the development of IPM programs that include a model program guidebook, resources provided through the DPR's Internet Web site, and a training program.

IPM. Under the HSA, IPM, a strategy also recommended by the US EPA, is defined as a pest management strategy that focuses on long-term prevention or suppression of pest problems through a combination of techniques such as monitoring for pest presence and establishing treatment threshold levels, using non-chemical practices to make the habitat less conducive to pest development, improving sanitation, and employing mechanical and physical controls. The IPM strategy offers use of the least toxic pesticides only after careful monitoring indicates they are needed according to pre-established guidelines and treatment thresholds.

The HSA exempts certain pesticides from the requirements of the HSA, including pesticide that is in the form of a self-contained bait or trap, gel or paste deployed as a crack and crevice treatment, any pesticide exempted from regulation by the US EPA, or antimicrobial pesticides, including sanitizers and disinfectants. All other pesticides are commonly referred to as "non-exempt pesticides".

After several attempts to ban specified pesticides in schools, then Senator DeSaulnier introduced SB 1405 in 2014. The bill required schools to develop an IPM and required school staff and pest control applicators to receive training on the safe use of pesticides if certain pesticides will be used. SB 1405 was signed into law by Governor Brown.

DPR offers two school IPM workshops and two specialized IPM workshops per year. DPR also administers an online training video pursuant to the requirements of SB 1405.

DPR surveys and pesticide report. DPR has conducted four surveys (2001, 2002, 2004, 2010) assessing public schools' implementation of IPM. Survey results showed increasing adoption of IPM strategies over time. As of the 2010 survey, 68% of districts reported adoption of IPM programs while all districts reported using at least one pesticide product during the year. Pursuant to SB 1405, presumably, all districts that use non-exempt pesticides have adopted IPMs and pesticide administrators are receiving training. A 2015 DPR report on pesticide use in schools and child care centers shows the two most used applications to be glyphosate, used for weed control, and strychnine, used in bait projects placed in gopher burrows underground. The most common outdoor locations where pesticides were used were landscape and building exterior and the two most common indoor locations were cafeteria/kitchen and classrooms. Administration was done mainly on Saturdays and August was the month with the most applications reported.

Arguments in Support. The author states that “pesticides cause a variety of health problems. According to the U.S. Environmental Protection Agency, ‘adverse effects of pesticide exposure range from mild symptoms of dizziness and nausea to serious, long-term neurological, developmental and reproductive disorders.’ Further, the Agency states, ‘There are ‘critical periods’ in human development when exposure to a toxin can permanently alter the way an individual's biological system operates.’ The National Academy of Sciences reports that children are more susceptible to chemicals than adults and estimates that 50% of lifetime pesticide exposure occurs during the first five years of life. Pesticides can increase susceptibility to certain cancers, by breaking down the immune system’s surveillance against cancer cells. Infants and children, the elderly, and the chronically ill are at greatest risk from chemically-induced immune suppression.”

According to the author, this bill was introduced following reports that students enrolled in the Palos Verde Peninsula School District showed symptoms that included rashes and difficulty breathing after treatment to eradicate gophers. According to the author, the school district suspended the use of chemicals and pesticides at several schools in 2017.

Arguments in opposition. Opposition expresses concerns that the bill may have inadvertent consequences. The Los Angeles Unified School District (LAUSD), which opposes the bill, has been recognized by DPR on more than one occasion for its robust IPM program, which was established in 1999. LAUSD states that while the district advocates for alternative means to eradicate pests, such as inspection, sanitation, behavioral practices, mechanical pest eradication and training, there is still a need for pesticide products on campuses. This bill would prevent the district from responding to such service calls as those that involve bees, bedbugs, fleas, mites, cockroaches and other noxious pests that without the use of pesticides could cause severe health risks to students, who may be allergic to bees, may cause infection by mites, or cause students to bring home bedbugs.

Concern has also been raised that with a new requirement to implement food composting recycling at schools SB 1383 (Lara), Chapter 395, Statutes of 2016, school districts will be confronted with new pest control challenges.

Exemption for public health emergency unclear. The bill allows pesticides to be used if a local public health officer declares a public health emergency requiring the use of pesticides. It is unclear what conditions would qualify as a public health emergency. Does an insect infestation at *one* schoolsite constitute a public health emergency?

Potential consequences. The Committee may wish to consider whether a ban, while reducing children’s exposure to pesticides, may create unintended problems if a ban is enacted without ensuring that school districts have other tools in the event of an infestation. For example, if a school is found to have a sudden roach infestation in the school’s kitchen, will that school be able to address the problem expeditiously without exposing students’ lunches to bacteria and students to potential diseases?

SB 1405 was enacted in 2014 following several attempts to ban specified pesticides in school. The goal of SB 1405 is to move school districts toward more organic strategies to control problems with pests while preserving a school district’s ability to use pesticides as a last resort. The requirements of SB 1405 took effect on July 1, 2016. The Committee may wish to consider the following: Should the Legislature provide more time for implementation before imposing a

ban? Should there be an evaluation of the effect of that bill before a ban is imposed? Should all non-exempt pesticides be banned? If the Legislature chooses to ban those considered to have the worst health impact, should that determination be based on a body with expertise?

Staff recommends striking the contents of the bill and inserting an amendment to require the DPR to do the following:

- 1) Conduct an evaluation of the implementation of SB 1405 requiring the development of an IPM if certain pesticides are used and training of pesticide administrators.
- 2) Recommend to the Legislature whether one or more pesticides should be banned. Require DPR to consider a school district's options to address an infestation if those pesticides are banned.
- 3) Authorize DPR to consult with other state or federal agencies, stakeholders, and experts in developing the recommendation.

Previous legislation. SB 1405 (DeSaulnier), Chapter 848, Statutes of 2014, requires a school designee to post on the Internet Web site of a schoolsite an IPM plan if certain pesticides are used at a schoolsite; requires reporting of specified pesticide use at a schoolsite; and requires individuals applying pesticides at schoolsites to complete an annual training.

SB 394 (DeSaulnier), held on the Senate Appropriations Committee suspense file in 2011, would have required school staff to attend an IPM training once every three years. Earlier versions of the bill would have banned specified pesticides from use in schools.

SB 1157 (DeSaulnier) would have required the adoption of an IPM program by all schools and required the DPR to reimburse school districts for the costs of IPM training. The bill was vetoed by Governor Schwarzenegger in 2010 with the following veto message:

"While currently voluntary in state law, I support the policy of implementing integrated pest management programs at schools to the greatest extent possible. Unfortunately, I cannot support paying for this school program out of an alternative fund at DPR. To do so would start a dangerous precedent for finding unrelated revenue sources to fund, expand, or create K-12 programs outside of the Proposition 98 guarantee."

AB 2865 (Torrico), Chapter 865, Statutes of 2006, expanded the Healthy Schools Act to include private child care facilities.

AB 1006 (Chu), introduced in 2003, would have prohibited specified pesticides to be used in schools. The bill was held in the Senate by the author in 2004.

AB 2260 (Shelley), Chapter 718, Statutes of 2000, established the Healthy Schools Act of 2000.

REGISTERED SUPPORT / OPPOSITION:

Support

California Guild
Californians for Pesticide Reform
Clean Water Action
Several individuals

Opposition

American Chemistry Council
Household & Commercial Products Association
Los Angeles Unified School District
Pest Control Operators of California
Rise
Western Plant Health Association

Analysis Prepared by: Sophia Kwong Kim / ED. / (916) 319-2087