Date of Hearing: March 27, 2019

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 468 (Muratsuchi) – As Amended March 18, 2019

[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: organic landscape management practices

SUMMARY: Prohibits the use of lawn care pesticides on the outdoor spaces or playgrounds of schoolsites. Specifically, **this bill**:

1) Establishes the following definitions:

   a) "Emergency pesticide application" means a situation where reasonable alternative methods to lawn care pesticide use have been exhausted, and application of a lawn care pesticide is necessary based on an imminent threat to public health.

   b) "Imminent threat to public health" means an unpredictable outbreak of poisonous, stinging, or biting insects, or poisonous or stinging plants that threatens public health.

   c) "Lawn care pesticide" means a pesticide registered by the United States Environmental Protection Agency and labeled pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.) for use in lawn, garden, and ornamental sites. Lawn care pesticides shall not include any of the following:

      i) A horticultural soap or oil that is registered with the United States Environmental Protection Agency that does not contain any synthetic pesticide or synergist.

      ii) A pesticide classified by the United States Environmental Protection Agency as an exempt material pursuant to Section 152.25 of Title 40 of the Code of Federal Regulations.

      iii) A pesticide including no active ingredients other than those published in the National List of Allowed and Prohibited Substances in Section 205.601 of Title 7 of the Code of Federal Regulations.

      iv) "Organic landscape management practices" includes all of the following:

         (1) Regular soil testing.

         (2) Addition of soil amendments that are certified organic by the Organic Materials Review Institute, California Certified Organic Farmers, or a similar United States Department of Agriculture accredited organic certifying agency, as necessitated by results of soil tests, following, but not limited to, recommendations by appropriate organic pest management experts and scientists, including, but not

limited to, the Rodale Institute, Beyond Pesticides, or the Northeast Organic Farming Association.

(3) Selection of plantings using criteria for hardiness, suitability to local native conditions, climate, drought, disease, and pest resistance, and efficiency of maintenance.

(4) Modification, as appropriate, of outdoor management practices to comply with organic horticultural science, including scouting, monitoring, watering, mowing, pruning, efficient spacing, and mulching.

(5) As-needed use of physical controls, including hand weeding and overseeding.

(6) Effective use of biological controls, including the introduction of natural predators, and enhancement of the environment of a pest's natural enemies.

(7) Through observation, determining the most effective treatment time, based on pest biology and other variables, including weather and local conditions.

(8) Eliminating pest habitats and conditions supportive of pest population reduction and control.

(9) Upon emergency pesticide application, the notice and posting requirements are fulfilled as soon after application as practicable or as otherwise required by law.

v) "Playground" means an improved outdoor area designed, equipped, and set aside for children's play, and shall include any play equipment, athletic field, turf, surfacing, fencing, signs, internal pathways, internal landforms, vegetation, and related structures.

vi) "Schoolsite" has the same meaning as that term is defined in Section 17609.

2) Prohibits the use of lawn care pesticides on the outdoor spaces or playgrounds of schoolsites unless an emergency pesticide application is necessary due to an imminent threat to public health.

3) Requires the Department of Pesticide Regulation (DPR) to prioritize the implementation and enforcement of the provisions of this bill to protect school children, families, staff, and communities from the harmful effects of toxic chemical maintenance at schoolsites.

4) Requires the DPR, on or before October 1, 2020, to establish organic landscape management practices for the outdoor spaces and playgrounds of schoolsites, including incorporating the notice and posting requirements for emergency pesticide applications.

5) Requires schoolsites to comply with the organic landscape management practices establishes by the DPR beginning January 1, 2021.

6) Requires the DPR to, on a quarterly basis, seek the advice and counsel of experts and scientists in the fields of turf and landscape management, maintenance of trees and shrubs,

organic pest management, and integrated pest management protocols on fulfilling the requirements of this bill.

EXISTING LAW:

1) Establishes the Healthy Schools Act of 2000 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 (IPM)," 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 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 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. Specifies 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)

12) Requires the DPR, on or before January 1, 2021, to submit a report to the Legislature that 1) evaluates the implementation, and the effect of the implementation, of the provisions of the Healthy Schools Act of 2000; and 2) provides recommendations on improving the implementation and efficacy of the Healthy Schools Act of 2000. Authorizes the DPR to consult, as appropriate, with relevant local, state, or federal agencies, stakeholders, and experts in the preparation of the report. (EC Section 17614.5)

FISCAL EFFECT: Unknown. Legislative Counsel has identified this bill as having potential state mandated costs.

COMMENTS: **Pests in schools**: Pests such as insects, rodents, fungi, and weeds can affect the school environment and the people who work and learn there. While pests can be found in many places in and around schools, common habitats for pests include cafeterias, classrooms, lockers, gyms, locker rooms, dumpsters, landscapes, school grounds, and athletic fields. Pests can cause human health problems, structural damage, and plant damage.

Risks of pesticide exposure: The US EPA reports that the adverse effects of pesticide exposure range from mild symptoms, such as dizziness and nausea, to serious, long-term effects, including neurological, developmental, reproductive, endocrine disrupting, and carcinogenic effects. According to the American Medical Association, pesticide poisoning is a commonly under-diagnosed illness, as it can resemble acute upper respiratory tract illness, conjunctivitis, gastrointestinal illness, and many other conditions.

Healthy Schools Act (HSA). 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 Integrated Pest Management (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, Chapter 848, 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 Jerry 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.

The best way to illustrate the HSA in more detail is to list the requirements for public K–12 schools, public and private child care centers, and employer-sponsored child care centers. These requirements include:

1) Designating a district employee who will make sure the requirements of the HSA are met when pesticides are used in the district;

2) Developing, if a school chooses to use a non-exempt pesticide, an IPM plan using the DPR IPM Plan template or its own school district IPM plan, approved by DPR, and posting the IPM plan on the district website;

3) Sending parents, guardians, and staff a written notification of pesticides expected to be applied at district schools during the year;

4) Establishing a registry for all interested parents, guardians, and staff to sign up and receive notifications of individual pesticide applications;

5) Posting signs where pesticides will be applied;

6) Keeping records of pesticide applications made by district staff and pest management contractors for at least four years;

7) Sending pesticide use reports for pesticide applications made by district staff to DPR at least once per year;

8) Never using prohibited pesticides; and,

9) Ensuring that the IPM coordinator and any person who applies any pesticide (including exempt pesticides) on school grounds completes the required IPM training (annually for district staff and during each licensing period for professional applicators).

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.

This bill bans the use of lawn care pesticides on outdoor spaces and playgrounds of schoolsites unless an emergency application is necessary due to an imminent threat to public health, and requires schoolsites, beginning January 1, 2021, to utilize organic management practices developed by the DPR. The bill exempts from the definition of pesticides: 1) horticultural soap or oil that is registered by the US EPA that does not contain any synthetic pesticide or synergist; 2) a pesticide classified by the US EPA as an exempt material; and 3) a pesticide including no active ingredients other than those published in federal regulations under the National List of Allowed and Prohibited Substances.

The author states that "more and more school systems are looking towards eliminating toxic pesticide use in light of recent court decisions and liability concerns regarding the herbicide glyphosate, which a jury rules as the cause of a California school groundskeeper's cancer diagnosis."

Report due on January 1, 2021. Last year, earlier versions of AB 2816, introduced by the same author, banned indoor and outdoor use of pesticides in schools. This Committee raised concerns about an outright ban and support for successful implementation of the Healthy Schools Act. The bill was amended and the version signed by Governor Brown requires DPR to submit a report to the Legislature by January 1, 2021 evaluating the implementation and effectiveness of the Healthy Schools Act. While this bill is narrower than last year's bill, it remains a version of AB 2816. **Staff recommends** striking the ban and related sections in the bill.

Organic landscape management practices. The bill requires schoolsites to implement organic landscape management practices. According to the sponsor, California Guild, several school districts in the state have stopped the use of certain pesticides. According to maintenance

directors of two Orange County school districts, these practices include prevention strategies, non-chemical controls, and use of organic pesticides. Examples include sealing cracks in concrete to prevent the growth of weeds, testing soil and adding nutrients that choke weeds, hand pulling weeds, and using equipment that can kill weeds naturally, such as the use of heat. However, organic pesticides continue to be used by both districts, which are more expensive and require more frequent administration. It is unclear whether the organic pesticides used by these districts fall into one of the exempted categories in the bill. One of the maintenance directors expressed support for the Healthy Schools Act and advocated for more training and oversight of the Act to increase the number of school districts utilizing these practices.

The bill requires DPR to develop organic landscape management practices by October 1, 2020, but the bill also defines the strategies that comprise "organic landscape management practices". The definition may act as a one-size-fits-all approach that does not take into account geographical, climate and soil differences in different parts of the state. The definition may also restrict DPR's consideration of other methods. **Staff recommends** striking the definition and instead, incorporating the components as strategies the DPR shall consider and requiring DPR to disseminate the information to school districts, including posting the practices on its Web site. **Staff also recommends** striking the requirement for schoolsites to implement the practices beginning January 1, 2021.

Arguments in support. Supporters cite the risks of pesticide exposures to children and staff when toxic pesticides are used on lawns and other outdoor areas. The concern with the ingredient glyphosate is mentioned most frequently by supporters, including pending lawsuits. Supporters cite a number of California cities, including Irvine, Burbank, Malibu, Benicia, Richmond, and Carlsbad that are restricting the use of synthetic pesticides and utilizing organic landscape management practices, that they do not believe result in higher costs.

Arguments in opposition. Opponents state that rather than banning chemicals that may change and create a burden on maintenance staff, the state should enhance training and education of the Healthy Schools Act. They cite staff turnover and lack of knowledge as reasons school districts have not complied with the Act. Opposition also raise concerns that the term "organic" is not clearly defined.

Prior legislation. AB 2816 (Muratsuchi), Chapter 720, Statutes of 2018, requires the DPR, on or before January 1, 2021, to submit a report to the Legislature that 1) evaluates the implementation, and the effect of the implementation, of the provisions of the Healthy Schools Act of 2000; and 2) provides recommendations on improving the implementation and efficacy of the Healthy Schools Act of 2000.

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 (sponsor)
American Federation Of State, County And Municipal Employees, AFL-CIO
Bennett Valley Guild Protect Our Children
Beyond Pesticides
California Health Coalition Advocacy
Center For Environmental Health
Children's Health Defense
Citizens For Healthy Farms And Families
Christina L. Shea, Mayor Pro Tem, City of Irvine
Educate. Advocate.
Empower Family California
Environmental Working Group
Friends of the Earth
Good Food Brigade
Herbicide-Free Uc
Hessel Community Guild
Institute of Responsible Technology
Marshall Guild
Moms Across America
Moms Advocating Sustainability
Non-Toxic Communities
Nourishing Basics
Organic Sacramento
Poison Free Malibu
Public Awareness For Preventive Healthcare (Paphc, Inc.)

Redcrest Community Center
Sacramento Community Guild
Numerous individuals

Opposition

American Chemistry Council
Association of California School Administrators
California Association of School Business Officials
California School Boards Association
Coalition For Adequate School Housing
Fragrance Creators Association
Household And Commercial Products Association
Lawn And Horticultural Products Working Group
Los Angeles Unified School District
Pest Control Operators of California
Responsible Industry For A Sound Environment - Rise
Western Plant Health Association

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