

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

House Bill 433 (Delegate S. Robinson)
 Environmental Matters

Agriculture - Lawn Care Pesticides - Child Care and School Facilities - Prohibition

This bill prohibits the application of a lawn care pesticide on the grounds of any “child care facility” or “school,” including a playground or recreational field, unless the Secretary of Agriculture determines that an emergency application is necessary. In the event of an emergency application, children must be prohibited from access to the area treated for at least the amount of time specified on the pesticide label. Each child care facility and school must keep records of emergency applications and designate a contact person to maintain the pesticide label or material safety data sheet of each lawn care pesticide used. Specified notification must also be provided to each parent, guardian, and staff member within 24 hours of an emergency application or on the next school day.

Fiscal Summary

State Effect: General fund expenditures increase by \$265,800 in FY 2014 for the Maryland Department of Agriculture (MDA) to hire an entomologist and three inspectors to assist affected entities with compliance and to enforce the bill. General fund expenditures may also increase for the Department of Juvenile Services (DJS) to comply with the bill to the extent it applies to the department’s facilities. Future years are annualized and adjusted for inflation.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	265,800	259,500	254,400	265,800	277,700
Net Effect	(\$265,800)	(\$259,500)	(\$254,400)	(\$265,800)	(\$277,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: County school systems may be impacted to the extent the bill limits the ability of schools to effectively control pests and weeds.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill prohibits a person from applying a lawn care pesticide on the grounds of any child care facility or school, including a playground or recreational field, unless the Secretary of Agriculture determines that the emergency application of a lawn care pesticide is necessary to eliminate an immediate threat to human health. If an emergency application of a lawn care pesticide occurs on the grounds of a child care facility or school, including playgrounds and recreational fields, children must be prohibited from access to the area treated with the lawn care pesticide for at least the amount of time specified on the pesticide label.

Each child care facility and school must (1) designate a contact person to maintain the pesticide label or material safety data sheet of each lawn care pesticide used on the grounds and (2) keep and maintain a written record of any emergency application of a lawn care pesticide on the grounds of the child care facility or school for at least five years. Within 24 hours after an emergency application, or on the next school day, the child care facility or school must notify each parent, guardian, and staff member that a lawn care pesticide was applied for emergency pest control and provide specified information regarding the application. The notification may be made by (1) telephone call; (2) direct contact; or (3) written notice sent home with the child or provided to the staff member.

“Child care facility” includes specified child care facilities licensed by the Maryland State Department of Education (MSDE) and the Department of Juvenile Services (DJS). “School” includes any school in which an instructional program is offered or provided for children in any grade from kindergarten through grade 8 and a preschool.

“Lawn care pesticide” means a pesticide registered by the U.S. Environmental Protection Agency (EPA) and labeled pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act for use in lawn, garden, or ornamental sites and areas.

MDA must adopt regulations to implement the bill’s provisions.

Current Law: Integrated pest management is required to be conducted at public schools in the public elementary and secondary system of the State. “Integrated pest management” means a managed pest control program in which methods are integrated and used to keep pests from causing economic, health related, or aesthetic injury through

the utilization of site or pest inspections, pest population monitoring, evaluating the need for control, and the use of one or more pest control methods including sanitation, structural repair, nonchemical methods, and, when nontoxic options are unreasonable or have been exhausted, pesticides in order to minimize the use of pesticides and minimize the risk to human health and the environment associated with pesticide applications.

Specified recordkeeping and notification requirements apply when pesticides are used. The integrated pest management law applicable to schools does not limit pesticide application only to emergency situations, but under the definition of integrated pest management, nontoxic options must be unreasonable or have been exhausted before applying a pesticide, and notification must be provided prior to an application. The law applies to pesticides in general and is not specific to lawn care pesticides, and it applies to school buildings as well as grounds.

State regulations governing child care facilities licensed by MSDE state that a pesticide may be used only if it is (1) approved by EPA; (2) used according to the manufacturer's instructions; (3) used only when children are not in care; and (4) stored apart from food, beverages, and cleaning agents.

Background: Connecticut and New York have enacted laws in recent years that prohibit the application of most pesticides to grounds of child care facilities and schools with the exception of emergency applications.

State Fiscal Effect: General fund expenditures increase for MDA by \$265,843 in fiscal 2014, which accounts for the bill's October 1, 2013 effective date. This estimate reflects the cost for MDA to hire one entomologist to develop outreach materials and provide outreach and training to owners and operators of affected facilities and three inspectors to assist with outreach and training programs and to conduct routine compliance inspections and complaint investigations to ensure compliance with the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Under current law, MDA is required to employ inspectors and other employees necessary for the proper enforcement of the pesticide application provisions of the Maryland Code. Over 10,000 entities are affected by the bill, based only on MSDE statistics of facilities licensed by that department. MDA indicates that existing staff cannot handle the additional workload created by the bill; to do so would be at the expense of other pesticide/pest control-related licensing, regulatory, and enforcement programs performed by existing staff.

Positions	4
Salaries and Fringe Benefits	\$159,867
Vehicles and Equipment	72,925
Operating Expenses	<u>33,051</u>
Total FY 2014 MDA Expenditures	\$265,843

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

DJS indicates that general fund expenditures increase by approximately \$500,000 annually to hire six administrative officers and 14 groundskeepers in order to comply with the bill with respect to DJS-run facilities. “Child care facility,” while defined to *include* child care facilities *licensed* by MSDE and DJS, is not limited *only* to those licensed facilities and presumably could include DJS-run facilities. According to the department, an administrative officer is needed in each of DJS’ six regions to handle the recordkeeping and notice requirements for emergency pesticide applications at DJS facilities. DJS also reports that a groundskeeper is needed at each of the department’s 14 facilities to maintain growth at fence lines for security purposes, since pesticides will not be able to be used for that purpose, even under the emergency (human health) exception.

The Department of Legislative Services (DLS) disagrees. DJS’ estimate is based on both indoor and outdoor pesticide applications even though the bill only applies to lawn care pesticides used on facility grounds. Also, it does not appear likely that emergency applications would occur with a frequency that would require six additional positions to handle the bill’s recordkeeping and notification requirements. It also is unclear why maintenance of growth along fence lines could not be accomplished with fewer resources. Thus, DLS advises that the bill could be implemented by DJS with considerably less than the approximately \$500,000 in general funds DJS estimates to be incurred annually, possibly even with existing resources.

MSDE indicates the bill does not impact the department’s operations or budget.

Any civil or criminal penalties imposed for violations of the bill are not expected to materially affect State finances.

Local Fiscal Effect: County school systems may be impacted by the bill’s requirements. The systems are currently subject to the integrated pest management law mentioned above, but it appears that the bill prohibits public schools from utilizing lawn care pesticides on school grounds, with the exception of emergency applications under MDA approval. Currently, pesticide applications are allowed under the integrated pest

management law under certain circumstances other than emergencies and in emergencies without MDA approval.

At least one county indicates that the bill does not have a fiscal impact, but two other counties have identified potential concerns over (1) greater numbers of injuries to students and community users due to weed growth on playing surfaces left untreated or treated with less effective means; (2) increased costs to maintain and repair surfaces affected by untreated weeds growing in cracks of the surfaces; and (3) the requirement that MDA approval be obtained before emergency applications, potentially delaying responses to emergencies and leading to legal action by parents and/or staff.

Small Business Effect: Small business child care facilities or schools may be meaningfully impacted to the extent the bill limits a facility's ability to control pests and operate safely. As mentioned above with respect to public schools, for example, there could be concern with how quickly approval is able to be obtained from MDA for an emergency application of pesticides. According to the Maryland State Child Care Association, however, use of pesticides is avoided to the extent possible by child care facilities, though in some cases where a facility is leasing space in a larger building, the facility may not have complete control over pesticide application around the facility. Those facilities may have more difficulty complying with the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 412 (Senator King, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Agriculture; Department of Juvenile Services; Maryland State Department of Education; Department of Human Resources; Anne Arundel, Garrett, and Howard counties; Maryland State Child Care Association; Connecticut Department of Energy and Environmental Protection; New York State Department of Environmental Conservation; Department of Legislative Services

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