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PESTICIDE USE AT SCHOOLS AND DAY CARE CENTERS

House Bill 5154 (Substitute H-3)
First Analysis (12-10-03)

Sponsor: Rep. Edward Gaffney
Committee: Agriculture and Resource
Management

THE APPARENT PROBLEM:

Regulations related to the use of pesticides are a mix of federal and state laws and rules. The federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) grants the U.S. Environmental Protection Agency the authority to regulate the registration, classification, and labeling of pesticides as well as the conduct of commercial and private pesticide applicators. In Michigan, Part 83 of the Natural Resources and Environmental Protection Act requires the registration of pesticides, regulates the distribution and labeling of pesticides, requires the licensure of pesticide dealers, and provides for the certification of private and commercial pesticide applicators.

In addition to state and federal statutes, Regulation 637 of the Department of Agriculture further details the use of pesticides. Among other provisions, the regulation includes numerous provisions relating to the use of pesticides at or near schools, including application and notification requirements. The regulation provides that within 30 days of the start of each school year, the primary administrator of a school district (or his or her designee) shall provide written notification to parent or guardians of children attending school of their right to be informed prior to any application of a pesticide on school property. Notification requirements for day care centers are to occur during September of each year. Also, the rule specifies that the operator of a day care center shall provide notification to parents or guardians of any child who is newly enrolled at the center during the course of the year.

During the course of committee testimony, representatives of the State Public Affairs Committee of the Junior League of Michigan, an organization that promotes voluntarism and improving the community through the effective action and the leadership of trained volunteers, asserted that current regulations related to the use of pesticides at schools, particularly notification, are not being fully followed by school districts throughout the state. It is believed

that the public's awareness of, and compliance with, the school and day-care requirements of Regulation 637, is not terribly well-known and enforced, and that compliance with those regulations could be improved through the enactment of legislation codifying and further detailing those regulations.

THE CONTENT OF THE BILL:

Under Part 83 (Pesticide Control) of the Natural Resources and Environmental Protection Act, school administrators are required to notify parents and guardians of children attending the school of their right to be informed prior to any application of a pesticide at the school.

The bill would delete the above provisions and specify that a school or day care center would be required to notify the parents or guardians of children attending the school or day care center that the parents or guardians would receive advance notice prior to the application of a pesticide at the school or day care center. The school would provide the annual notice within 30 days of the start of the school year, and the day care center would provide the annual notice each September. [See administrative rule R 287.637.15(5) and (6)]

The annual notice would have to be in writing and specify the two methods by which the advance notice would be given by: (1) posting at an entrance of the school or day care center, and (2) posting at a public, common area, other than an entrance, of the school or day care center at least 48 hours in advance; electronic mail sent at least 48 hours in advance; providing a telephone call to the parent or guardian; or providing students of the school or children in the day care center with a written notice to be delivered to their parents or guardians. [See R 287.637.15(9)]

In addition, the annual notice would have to state that parents or guardians are entitled to receive, upon

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request, the advance notice at least three days prior to the application. Also, for a school, the annual notice would have to inform parents or guardians that they are permitted to review the school's integrated pest management plan and records of pesticide applications, and will be provided with contact information for the person at the school who is responsible for pesticide applications. [See R. 287.637.15(7)]

The advance notice would have to include a statement that a pesticide will be applied, the date and location of the application, the targeted pests, contact information for persons at the school or day care center responsible for maintain records of pesticide applications, and telephone information for the National Pesticide Telecommunications Network and the state Department of Agriculture. [See R. 287.637.15(8)]

[Note: The National Pesticide Telecommunications Network appears to have changed its name to the National Pesticide Information Center. The center is a joint effort between the U.S. Environmental Protection Agency and Oregon State University to provide people with objective, science-based information related to pesticides.]

A school or day care center would be required to provide the advance notice prior to actual application of a pesticide. However, the pesticide could be applied, prior to notification, in case of an emergency. [See R. 287.637.15(11)] A person would be prohibited from applying a pesticide if children are present in the room at the school or day care center, and a school or day care center would be required to prohibit children from entering an area where a pesticide has been applied for four hours or the reentry time specified on the label, whichever is longer. [See R. 287.637.15(2)]

The bill would amend the definition of "school" in Part 83 to specifically exclude a home school, and would define "day care center" to mean a facility, other than a private residence, that receives at least one preschool or school-age child for care for less than 24 hours a day, away from the child's parent or guardian, and licensed by the Family Independence Agency under the child care licensing act. [This definition of day care center is consistent with its definition under Rule 1 of Regulation 637, R. 287.637.1]

In addition, the bill would require to the Department of Agriculture, within one year of the bill's effective date, to establish a model integrated pest

management plan for schools. The plan would be developed in consultation with the Department of Education and would be made available to all school districts, intermediate school districts, public school academies, and private schools. The MDA would be required to encourage school boards to adopt and follow the integrated pest management plan and require appropriate staff to obtain periodic updates and training on integrated pest management.

Integrated pest management is a pest management system that uses all suitable techniques in a total management system to prevent pests from reaching unacceptable levels or to reduce existing pest populations to acceptable levels. The purpose of integrated pest management is to manage pests with the least possible impact on people, property, and the environment. The plan would include a site evaluation, consideration of relationship between pest biology and pest management methods, consideration of all available pest management methods, pest control method selection, and continual evaluation of the plan to determine its effectiveness. The plan requires the following records be maintained: site address; date of service; targeted pests; number of pests found; conditions conducive to infestation; pest management recommendations; structural or habitat modifications; the name, quantity, and location of pesticides used; and the name of the applicator and pest control firm. Also, commercial applicators would have to provide building managers with information related to the plan and initial inspection and records maintained. The manager of a building where a pesticide is applied would have to post signs notifying persons of the application of that pesticide. [See R. 287.637.14]

MCL 324.8303 et al.

BACKGROUND INFORMATION:

The Department of Agriculture's regulations pertaining to the use of pesticides in and around schools is contained in Rule 15 of Regulation 637 (R. 287.637.15). In addition to other provisions stated above, the rule provides the following:

- The notice shall either be mailed or delivered directly to the parent or guardian of child attending the school or day care center, and shall contain (1) a statement that pesticides are periodically applied on the property of the school or day care center, (2) a statement that parents or guardians have the right to request prior notification of pesticide applications to the building or grounds, (3) specific directions as to how a parent or guardian can be included on the list for prior notification, and (4) a statement that

pesticides may be applied in an emergency situation without prior notification, but that parents or guardians who request prior notification will be notified of the application after it occurs. The notice provided to parents or guardians shall include the approximate location and scheduled date of the application.

- Prior notification would have to be provided at least one day in advance of the application of the pesticide, and could be provide by means of a telephone call made directly to the parent or guardian, a written notice mailed least three days prior to the application, or written notice sent home with the child.

- Insecticide applications shall not be made in a room of a school unless that room will remain unoccupied by students for four hours or the required reentry period, whichever is longer.

- Outdoor ornamental or turf applications of liquid spray pesticides shall not be made on school grounds within 100 feet of occupied classrooms during normal class hours or when persons are using the treatment area.

- Pesticide applicators are required to notify the school's building manager of any reentry intervals that are required per the product label that the applicator has applied in the school building or on school property.

- During the months when school is not in regular session, school administrators may utilize a message notification system, such as voice mail, that parents or guardians may access at least one day prior to any application.

In addition, the under section 8325 of NREPA, the department is required to promulgate rules related to the development of training programs for integrated pest management systems in schools, public buildings, and health care facilities. The regulations related to integrated pest management are contained in Rule 14 of Regulation 637. [See R 287.637.14] The rule specifies that, generally speaking, before a pesticide application can occur in a school, public building, or health care facility (1) a pesticide applicator is required to participate in MDA approved IPM training program and (2) a verifiable integrated pest management program must be in place for each building. The integrated pest management program must include those elements described above in the bill.

Currently pending in Congress is H.R. 121, introduced by Representative Holt (D-New Jersey). The bill, entitled the School Environment Protection Act of 2003, would amend the federal Insecticide, Fungicide, and Rodenticide Act to require the administrator of the EPA to (1) establish a national school integrated pest management advisory system to develop and update uniform standards and criteria for implementing integrated pest management systems in schools, and (2) provide grants to local educational agencies to develop such systems.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on the state or local units of government. (HFA analysis dated 12-1-03 on an earlier, though substantially similar version of the bill.)

ARGUMENTS:

For:

Schools provide pests with an area that is ripe for habitat development and, if not controlled, infestation. In many instances, application of a pesticide is necessary to control population or incidence of the pest. However, these pesticides can be extremely dangerous to children, as their bodies continue to grow. In an article earlier this year, the *Detroit Free Press* noted that "[m]any chemicals are heavier than air and saturate the space closest to the ground - a child's breathing zone. Children are also more vulnerable because their bodies are still developing." Exposure to pesticides can cause, in the short term, nausea, headaches, respiratory problems and dizziness. In the long term, excess exposure to pesticides can affect a child's neurological, respiratory, immune, and endocrine systems.

The purpose of the advance notification provisions is to inform parents of children in schools and day care settings that a pesticide will be applied to the school or day care center. This allows parents to take whatever action they deem appropriate, in response to the application. A parent may instruct his or her child to avoid playing in a certain part of the school yard during recess following an application, or the parent may withhold the child from school for the day following application if the child's allergies and sensitivities to the pesticide warrant such an action.

That being said, when the notification process breaks down, whether it is because parents aren't aware of their right to advance notice, or the parents aren't

notified of the application, children invariably suffer. The breakdown of the notification process may very well be due to the fact that parents and some school administrators aren't aware of the requirements under Regulation 637. (How many average citizens peruse the Administrative Code?) The bill strengthens current rules by increasing the time requirement in which advance notice must be made. Under the rule [R 287.637.15(9)] advance notice must be provided not later than the day before the scheduled application and be made via telephone call, written notice mailed to the parent, or written notice provided to the student to be delivered to the parent. The bill expands the list to provide that advance notice may be provided via electronic mail or posting in a common area of the school, and at the main entrance of the school. In addition, the rule [R 287.637.15(8)] provides that the advance notice state the time and location of the application of the pesticide. The bill expands to also include the targeted pests, contact information for the person at the school or day care center who is responsible for maintaining records related to pesticide applications and a toll-free telephone number for a national pesticide information center and the state Department of Agriculture. The bill also provides that parents may review a school's integrated pest management plan.

POSITIONS:

The Department of Agriculture testified that it supports the bill. (12-9-03)

The Michigan Environmental Council indicated that it supports the bill. (12-9-03)

The Michigan Junior Leagues indicated that they support the bill. (12-9-03)

The YMCA indicated that it supports the bill. (12-9-03)

Analyst: M. Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.