



Senate

General Assembly

File No. 240

February Session, 2014

Substitute Senate Bill No. 443

Senate, April 1, 2014

The Committee on Environment reported through SEN. MEYER of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PESTICIDES ON SCHOOL GROUNDS, PARKS, PLAYGROUNDS, ATHLETIC FIELDS AND MUNICIPAL GREENS AND BANNING THE SALE AND USE OF GENETICALLY-ENGINEERED LAWN OR TURF SEEDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 10-231b of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2017*):

3 (a) No person, other than a pesticide applicator with supervisory
4 certification under section 22a-54 or a pesticide applicator with
5 operational certification under section 22a-54 under the direct
6 supervision of a supervisory pesticide applicator, may apply pesticide
7 within any building or on the grounds of any school, other than a
8 regional agricultural science and technology education center. This
9 section shall not apply in the case of an emergency application of
10 pesticide to eliminate an immediate threat to human health where it is
11 impractical to obtain the services of any such applicator provided such
12 emergency application does not involve a restricted use pesticide, as

13 defined in section 22a-47.

14 (b) No person shall apply a lawn care pesticide on the grounds of
15 any public or private preschool or public or private school with
16 students in grade [eight] twelve or lower, except that [(1) on and after
17 January 1, 2006, until July 1, 2010, an application of a lawn care
18 pesticide may be made at a public or private school with students in
19 grade eight or lower on the playing fields and playgrounds of such
20 school pursuant to an integrated pest management plan, which plan
21 (A) shall be consistent with the model pest control management plan
22 developed by the Commissioner of Energy and Environmental
23 Protection pursuant to section 22a-66l, and (B) may be developed by a
24 local or regional board of education for all public schools under its
25 control, and (2)] an emergency application of a lawn care pesticide
26 may be made to eliminate a threat to human health, as determined by
27 the local health director, the Commissioner of Public Health, the
28 Commissioner of Energy and Environmental Protection or, in the case
29 of a public school, the school superintendent.

30 Sec. 2. Section 10-231d of the general statutes is repealed and the
31 following is substituted in lieu thereof (*Effective January 1, 2017*):

32 (a) As used in this section, ["local or regional board of education"
33 means a local or regional board of education which has an integrated
34 pest management plan for the schools under its control that is
35 consistent with an applicable model plan provided by the
36 Commissioner of Energy and Environmental Protection under section
37 22a-66l and] "school" means a school, other than a regional agricultural
38 science and technology education center, under the control of a local or
39 regional board of education.

40 [(b) On and after July 1, 2000, at the beginning of each school year,
41 each local or regional board of education shall provide the staff of each
42 school with written guidelines on how the integrated pest
43 management plan is to be implemented and shall provide the parents
44 or guardians of each child enrolled in each school with a statement that
45 shall include a summary of the integrated pest management plan for

46 the school. Such statement shall be provided to the parents or guardian
47 of any child who transfers to a school during the school year. Such
48 statement shall (1) indicate that the staff, parents or guardians may
49 register for notice of pesticide applications at the school, and (2)
50 describe the emergency notification procedures provided for in this
51 section. Notice of any modification to the integrated pest management
52 plan shall be sent to any person who registers for notice under this
53 section.]

54 [(c)] (b) On and after July 1, 2000, parents or guardians of children in
55 any school and school staff may register for notice of pesticide
56 application at their school. Each school shall maintain a registry of
57 persons requesting such notice. Notice under this subsection shall
58 include (1) the name of the active ingredient of the pesticide being
59 applied, (2) the location of the application on the school property, (3)
60 the date of the application, and (4) the name of the school
61 administrator, or a designee, who may be contacted for further
62 information.

63 [(d)] (c) On and after July 1, 2000, a local or regional board of
64 education shall provide notice, by any means practicable, to any
65 person who has requested notice under subsection (b) of this section
66 on or before the day that [any] such application of pesticide is to take
67 place at a school. No application of pesticide may be made in any
68 building or on the grounds of any school during regular school hours
69 or during planned activities at any school except that an emergency
70 application may be made to eliminate an immediate threat to human
71 health if (1) it is necessary to make the application during such a
72 period and (2) such emergency application does not involve a
73 restricted use pesticide, as defined in section 22a-47. No child may
74 enter an area of such application until it is safe to do so according to
75 the provisions on the pesticide label.

76 [(e)] (d) A copy of the record of each pesticide application at a
77 school shall be maintained at the school for a period of five years. Such
78 record shall include the information required under section 22a-66a.

79 Sec. 3. (NEW) (*Effective October 1, 2014*) (a) As used in this section:

80 (1) "Pesticide" means a fungicide used on plants, an insecticide, a
81 herbicide or a rodenticide but does not mean a sanitizer, disinfectant,
82 antimicrobial agent or a pesticide bait in a tamper-proof container;

83 (2) "Microbial pesticide" means a pesticide that consists of a
84 microorganism as the active ingredient;

85 (3) "Biochemical pesticide" means a naturally-occurring substance
86 that controls pests by nontoxic mechanisms;

87 (4) "Lawn care pesticide" means a pesticide registered by the United
88 States Environmental Protection Agency and labeled pursuant to the
89 federal Insecticide, Fungicide and Rodenticide Act for use in lawn,
90 garden and ornamental sites or areas, except (A) a microbial pesticide
91 or biochemical pesticide that is registered with the United States
92 Environmental Protection Agency, (B) a horticultural soap or oil that is
93 registered with the United States Environmental Protection Agency
94 and does not contain any synthetic pesticide or synergist, or (C) a
95 pesticide classified by the United States Environmental Protection
96 Agency as an exempt material pursuant to 40 CFR 152.25;

97 (5) "Certified pesticide applicator" means a pesticide applicator with
98 (A) supervisory certification under section 22a-54 of the general
99 statutes, or (B) operational certification under section 22a-54 of the
100 general statutes, who operates under the direct supervision of a
101 pesticide applicator with said supervisory certification;

102 (6) "Controlling authority" means the executive head of the
103 municipal department responsible for the maintenance of a park,
104 athletic field, municipal green or playground, other than a playground
105 located on the premises of a school, or such person's designee.
106 "Controlling authority" does not include the executive head of any
107 municipal department responsible for the maintenance of any school;
108 and

109 (7) "Athletic field" means any field or open space that is used for

110 sporting or sporting-related activities, but does not include a golf
111 course or any such field or open space that is located on the premises
112 of a school or college or that is used for professional sporting or
113 professional sporting-related activities.

114 (b) No person other than a certified pesticide applicator shall apply
115 pesticide within any park, athletic field, municipal green or
116 playground, other than a playground located on the premises of a
117 school, except a person other than a certified pesticide applicator may
118 make an emergency application of pesticide to eliminate an immediate
119 threat to human health, including, but not limited to, the elimination of
120 mosquitoes, ticks and stinging insects, provided (1) the controlling
121 authority determines such emergency application of pesticide to be
122 necessary, (2) the controlling authority deems it impractical to obtain
123 the services of a certified pesticide applicator, and (3) such emergency
124 application of pesticide does not involve a restricted use pesticide, as
125 defined in section 22a-47 of the general statutes.

126 (c) No person shall apply a lawn care pesticide on the grounds of
127 any park, athletic field, municipal green or playground, other than a
128 playground located on the premises of a school, except: (1) An
129 emergency application of pesticide may be made to eliminate an
130 immediate threat to human health, including, but not limited to, the
131 elimination of mosquitoes, ticks and stinging insects, provided (A) the
132 controlling authority determines such emergency application of
133 pesticide to be necessary, and (B) such emergency application of
134 pesticide does not involve a restricted use pesticide, as defined in
135 section 22a-47 of the general statutes; or (2) an application of a lawn
136 care pesticide may be made on ornamental plants located on a
137 municipal green.

138 (d) Prior to providing for any application of pesticide on the
139 grounds of any park, athletic field, municipal green or playground,
140 other than a playground located on the premises of a school, the
141 controlling authority shall, within the existing budgetary resources
142 available to the controlling authority, provide public notice of such

143 application not later than twenty-four hours prior to such application
144 of pesticide. Such public notice shall be posted on the Internet web site
145 of the applicable municipality. If a controlling authority determines an
146 emergency application of pesticide to be necessary pursuant to
147 subsection (c) of this section, such notice shall be given as soon as
148 practicable. Notice under this subsection shall include (1) the name of
149 the active ingredient of the pesticide being applied, (2) the target pest,
150 (3) the location of the application of pesticide on the grounds of the
151 park, athletic field, municipal green or playground, other than a
152 playground located on the premises of a school, and (4) the date or
153 proposed date of the application of pesticide. A copy of each notice of
154 such application of pesticide at a park, athletic field, municipal green
155 or playground, other than a playground located on the premises of a
156 school, shall be maintained by the controlling authority for a period of
157 five years from the date of application of the pesticide and available to
158 members of the public.

159 Sec. 4. (NEW) (*Effective from passage*) (a) For purposes of this section:

160 (1) "Lawn or turf seed" means any seed, mixture or combination of
161 seed, or plant grown from such seed, that is commonly sold, marketed
162 or known as a grass seed and that is intended for residential or
163 commercial application, including, but not limited to, cool season
164 Kentucky bluegrass, red fescue, chewings fescue, hard fescue, tall
165 fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass,
166 colonial bentgrass and creeping bentgrass;

167 (2) "Genetic engineering" means the production of a lawn or turf
168 seed from an organism or organisms by a process in which the genetic
169 material has been changed through the application of: (A) In vitro
170 nucleic acid techniques, including recombinant DNA
171 (deoxyribonucleic acid) techniques and the direct injection of nucleic
172 acid into cells or organelles; or (B) fusion of cells, including protoplast
173 fusion, or hybridization techniques that overcome natural
174 physiological, reproductive or recombination barriers, where the
175 donor cells or protoplasts do not fall within the same taxonomic group,

176 in a way that does not occur by natural multiplication or natural
177 recombination;

178 (3) "In vitro nucleic acid techniques" means techniques, including,
179 but not limited to, recombinant deoxyribonucleic acid techniques, that
180 use vector systems and techniques involving the direct introduction
181 into organisms of hereditary materials prepared outside the organisms
182 such as microinjection, macroinjection, chemoporation,
183 electroporation, microencapsulation and liposome fusion; and

184 (4) "Organism" means any biological entity capable of replication,
185 reproduction or transferring genetic material.

186 (b) No person shall sell, offer for sale, distribute, market, use or
187 plant any lawn or turf seed that is entirely or partially genetically-
188 engineered for the purpose of making such seed pesticide resistant.

189 (c) The provisions of this section shall be enforced, within available
190 appropriations, by the Commissioner of Agriculture.

191 (d) (1) Any person who knowingly sells, offers for sale, distributes
192 or markets any lawn or turf seed in violation of this section shall be
193 liable for a civil penalty not to exceed one thousand dollars per day,
194 per product. Calculation of such civil penalty shall not be made or
195 multiplied by the number of individual packages of the same product
196 sold, displayed or offered for sale, distributed or marketed, used or
197 planted. Any civil penalty assessed under this subdivision shall accrue
198 and be assessed per each uniquely named, designated or marketed
199 product.

200 (2) Any person who knowingly uses or plants any lawn or turf seed
201 in violation of this section shall be fined two hundred fifty dollars.

202 (e) Any person who uses or plants any lawn or turf seed shall be
203 liable to an adjoining property owner for any economic damages that
204 are caused by such use or planting.

205 (f) The Commissioner of Agriculture may adopt regulations, in

206 accordance with the provisions of chapter 54 of the general statutes, to
207 implement and enforce the provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2017</i>	10-231b
Sec. 2	<i>January 1, 2017</i>	10-231d
Sec. 3	<i>October 1, 2014</i>	New section
Sec. 4	<i>from passage</i>	New section

Statement of Legislative Commissioners:

Throughout section 3, references to "athletic field or municipal green" were moved for clarity and in section 4(d) and (e), provisions were reworded for statutory consistency.

ENV *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Judicial Dept.	GF - Potential Revenue Gain	less than 5,000	less than 5,000

Municipal Impact:

Municipalities	Effect	FY 15 \$	FY 16 \$
Various Municipalities	STATE MANDATE - Potential Cost	Potential Minimal	Potential Minimal

Explanation

Sections 1 and 2 of the bill extend the prohibition of pesticides on school grounds, to public and private schools with students in grade 12 or lower. This is not anticipated to result in a fiscal impact, as pesticide free products are available to local and regional school districts at similar costs.

Section 3 of the bill prevents anyone other than a certified pesticide applicator from applying pesticides on school property. There is a potential minimal cost to municipalities to the extent that any municipality does not have a certified pesticide applicator. Such municipality would incur any costs associated with either certifying a current employee, or contracting out such services.

Section 4 of the bill requires that the Department of Agriculture (DoAg) enforce the prohibition on any lawn or turf seed that is entirely or partially genetically-engineered for making these seeds pesticide

resistant. There is no cost to DoAg to enforce this provision.

It should be noted that the bill requires that the enforcement provided by DoAg be provided within available appropriations. It does not appear that this mandates the agency to perform the activity regardless of available funding.

The bill also establishes civil penalties of (1) up to \$1,000 per day for anyone who knowingly sells, offers for sale, distributes, or markets any seed that violates the prohibition and (2) \$250 for anyone knowingly using this product. To the extent violations occur, there could be a revenue gain to the state anticipated to be \$5,000 or less annually from the collection of penalties.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations that occur, and the potential cost associated with the certified pesticide applicators.

Sources: <http://www.epa.gov/pesticides/ipm/>

OLR Bill Analysis**sSB 443*****AN ACT CONCERNING PESTICIDES ON SCHOOL GROUNDS, PARKS, PLAYGROUNDS, ATHLETIC FIELDS AND MUNICIPAL GREENS AND BANNING THE SALE AND USE OF GENETICALLY-ENGINEERED LAWN OR TURF SEEDS.*****SUMMARY:**

This bill bans selling, offering for sale, distributing, marketing, using, or planting lawn or turf seed that is at least partially genetically engineered to make the seed pesticide resistant. It subjects violators to civil fines and liability for economic damage to neighboring property owners.

The bill imposes restrictions on applying pesticides to municipal parks, athletic fields, greens, and playgrounds. The bill establishes electronic public notice requirements for these applications.

The bill also extends the general ban on applying lawn care pesticide on certain school grounds to public and private high schools, starting in 2017. It changes the information certain schools must provide about pesticide policies and use.

It also makes technical changes.

EFFECTIVE DATE: Upon passage, except for the restrictions on pesticide application on municipal grounds, which take effect October 1, 2014 and the provisions on school pesticide application which take effect January 1, 2017.

LAWN AND TURF SEED BAN***Genetic Engineering***

Under the bill, “genetic engineering” is a process by which a lawn or turf seed is produced from an organism or organisms in which the

genetic material has been changed by:

1. in vitro nucleic acid techniques (see below), including recombinant DNA techniques and direct injections of nucleic acid into cells or organelles (parts of cells) or
2. fusing cells, including protoplast fusion, or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells or protoplasts do not fall within the same taxonomic group, in a way that does not occur by natural multiplication or natural recombination.

The bill defines “in vitro nucleic acid techniques” as techniques, including recombinant DNA techniques, that use vector systems and techniques involving the direct introduction into organisms of hereditary materials (e.g., genes) prepared outside the organisms, such as micro- or macro-injection, chemo- or electro-poration, microencapsulation, and liposome fusion.

Scope of the Ban

The bill’s ban applies to a seed, seed mixture or combination, or plant grown from the seed that is (1) commonly sold, marketed, or known as a grass seed and (2) intended for residential or commercial use. It includes:

1. cool season Kentucky bluegrass;
2. chewings, hard, red, or tall fescue;
3. annual, intermediate, or perennial ryegrass; and
4. colonial or creeping bentgrass.

Existing law requires certain genetically engineered seed and seed stock to be labeled as such (see BACKGROUND).

Penalties and Economic Damages

Under the bill, anyone who knowingly sells, offers for sale,

distributes, or markets the banned lawn or turf seed is civilly liable for a fine of up to \$1,000 per product, per day.

The penalties must accrue and be assessed for each uniquely named, designed, or marketed product. The bill prohibits calculating them by multiplying the number of individual packages of the same product sold, offered, displayed, distributed, marketed, used, or planted.

The bill imposes a \$250 fine on anyone who knowingly uses or plants the lawn or turf seed. Anyone who uses or plants the seed is also liable for economic damages suffered by neighboring property owners caused by the use or planting.

Enforcement

The bill requires the agriculture commissioner to enforce the ban, within available appropriations. And it permits him to adopt regulations to implement and enforce the ban.

APPLICATION AT PARKS, ATHLETIC FIELDS, GREENS, OR PLAYGROUNDS

Non-Lawn Care Pesticide

The bill generally prohibits the application of these pesticides at parks, athletic fields, municipal greens, or playgrounds by anyone who is not a Department of Energy and Environmental Protection (DEEP)-certified pesticide applicator. But anyone can apply pesticide in an emergency to eliminate an immediate human health threat if:

1. the executive head of the municipal department responsible for the property's maintenance or his or her designee (the "controlling authority") finds the application is necessary,
2. he or she thinks it is impractical to obtain a certified applicator, and
3. the application does not involve a U.S. Environmental Protection Agency (EPA)- or DEEP-restricted pesticide.

Under the bill, a pesticide is a fungicide used on plants, an

insecticide, an herbicide, or a rodenticide, but not a sanitizer, disinfectant, antimicrobial agent, or pesticide bait in a tamper-proof container.

The bill specifies that “athletic field” includes any field or open space used for sports or sports-related activities. It excludes golf courses and fields or spaces that are (1) on school or college property or (2) used for professional sports.

Lawn Care Pesticide

The bill bans applying lawn care pesticide on the same municipal grounds, except to ornamental plants on municipal greens. It also permits applying pesticide on these grounds in certain emergency situations.

For an emergency pesticide application to occur under the bill, there must be an immediate threat to human health such as from mosquitoes, ticks, and stinging insects. The controlling authority must determine the emergency application is needed and the application cannot involve an EPA- or DEEP- restricted pesticide.

Under the bill, a “lawn care pesticide” is a pesticide (1) registered by EPA and (2) labeled according to federal law for use in lawn, garden, and ornamental sites or areas. It excludes:

1. EPA-registered microbial or biochemical pesticides,
2. horticultural soaps or oils registered with EPA and without a synthetic pesticide or synergist (enhancer of pesticide properties), and
3. certain pesticides classified by EPA as exempt materials (see BACKGROUND).

Microbial pesticide, under the bill, means a pesticide with a microorganism as the active ingredient. A biochemical pesticide is a naturally occurring substance that controls pests by nontoxic means.

Notice

Before pesticide can be applied to any athletic field, municipal green, park, or playground covered by the bill's requirements, the bill requires public notice of the application at least 24 hours in advance. But if the controlling authority determines an emergency application is needed, the notice must be provided as soon as practicable.

The bill requires the notice to be made by the controlling authority within existing budgetary resources. It must be posted on the municipality's website and include the:

1. pesticide's active ingredient,
2. target pest, and
3. date or proposed date of the application and the location of the application.

Under the bill, the controlling authority must keep a copy of each notice for five years from the pesticide application date. All copies must be publicly available.

PESTICIDE APPLICATION ON SCHOOL GROUNDS***Lawn Care Pesticide Ban***

Under current law, lawn care pesticide application is banned, except in an emergency to eliminate a human health threat, at public and private (1) preschools and (2) schools with students through grade eight. The bill extends the ban to cover public and private schools with students up to grade 12. For purposes of this law, "lawn care pesticide" means a federally registered and labeled pesticide for use in lawn, garden, and ornamental sites or areas.

Integrated Pest Management (IPM)

By law, IPM is the use of all available pest control techniques, including judicious pesticide use, when needed, to maintain a pest population at or below an acceptable level, while decreasing pesticide use.

The bill no longer requires local or regional boards of education for schools with IPM plans to provide (1) school staff with guidelines on how to implement their IPM plan and (2) parents or guardians with a summary of the plan. The summary includes instructions on how to be notified of a pesticide application and a description of the procedure for an emergency pesticide application.

Under existing law, parents and guardians can request notice of pesticide application at these schools and the schools must keep a registry of these people. The notice includes the (1) pesticide's active ingredient, (2) location and date of application, and (3) person who can be contacted for more information. Anyone on the registry must be notified of an application at least on the date it occurs.

The bill applies these rules to schools with or without IPM plans, but presumably they only apply to schools with IPM plans as another statute governs schools without these plans. By law, schools without IPM plans must provide similar notice to parents and guardians, except that the notice must generally occur at least 24 hours before the application and include the target pest (CGS § 10-231c).

BACKGROUND

Exempt Pesticides

Certain pesticides and pesticide classes are not federally regulated under the federal Insecticide, Fungicide, and Rodenticide Act. They include:

1. pheromones and similar compounds used in pheromone traps,
2. preservatives for biological specimens (e.g., embalming fluids),
3. products consisting of food to attract pests,
4. natural cedar, and
5. minimum-risk pesticides (i.e., containing certain active ingredients) (40 CFR 142.25).

Labeling of Genetically Engineered Seed and Seed Stock

By law, seed and seed stock that is at least partially genetically engineered and intended to produce certain foods for human consumption must be labeled as “Produced with Genetic Engineering.” But this requirement does not take effect until a certain date after four other northeast states, including one bordering Connecticut, have enacted a similar labeling law and the total population of these states exceeds 20 million (CGS § 21a-92c).

Related Bills

SB 46, File 104, favorably reported by the Children’s Committee, expands the general ban on using lawn care pesticides on school grounds to high schools.

sSB 68, File 32, favorably reported by the Environment Committee, exempts certain products from the general ban on applying lawn care pesticides on the grounds of preschools and schools with students in grade eight or lower.

HB 5580, favorably reported by the Planning and Development Committee, requires the DEEP commissioner to report on best practices for municipalities using synthetic and organic pesticides.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 17 Nay 11 (03/21/2014)