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SENATE BILL 326

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Brenda McKenna

AN ACT

RELATING TO THE ENVIRONMENT; LIMITING THE USE OF PESTICIDES ON
PUBLIC GROUNDS AND SCHOOL GROUNDS; PROVIDING DUTIES AND
PROCEDURES FOR PESTICIDE USE BY THE STATE, LOCAL GOVERNMENTS
AND PUBLIC SCHOOLS; ENACTING THE PUBLIC SCHOOLS PESTICIDE
MANAGEMENT ACT; ENACTING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 6 of this
act may be cited as the "Public Schools Pesticide Management
Act"."

SECTION 2. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Public

1 Schools Pesticide Management Act:

2 A. "administrative spaces" means administrative or
3 other school district buildings and grounds that are not part
4 of a public school;

5 B. "coordinator" means the person designated in the
6 school district as the ecological pest management coordinator
7 and also the local superintendent's designee for implementation
8 of the plan for administrative spaces;

9 C. "ecological pest management" means the use of
10 comprehensive methods, including site or pest inspections, pest
11 population monitoring, exclusion practices, elimination of
12 habitat and pest-conducive conditions, to manage pests in such
13 a way as to minimize the use of pesticides and associated risks
14 to human health and the environment;

15 D. "emergency pesticide" means a pesticide that is
16 not a permitted indoor pesticide or a permitted outdoor
17 pesticide and is more toxic than those pesticides;

18 E. "permitted indoor pesticide" means:

19 (1) an antimicrobial pesticide;

20 (2) a pesticide classified by the United
21 States environmental protection agency as a minimum risk
22 pesticide;

23 (3) a pesticide including no active
24 ingredients other than those found in the national organic
25 program's national list of allowed substances;

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1 (4) insecticidal bait containing no synthetic
2 ingredients and that is placed in a tamper-resistant bait
3 station or in an area inaccessible to students and the general
4 public; and

5 (5) a ready-to-use dust, powder or gel
6 formulation of insecticide containing no synthetic ingredients
7 and applied in an area inaccessible to students and the general
8 public;

9 F. "permitted outdoor pesticide" means:

10 (1) a pesticide classified by the United
11 States environmental protection agency as a minimum risk
12 pesticide; and

13 (2) a pesticide containing no active
14 ingredients other than those found in the national organic
15 program's national list of allowed substances;

16 G. "pest" means an insect, rodent, nematode,
17 fungus, weed or other form of terrestrial or aquatic animal or
18 plant life or a virus, bacteria or other microorganism that has
19 a deleterious affect on humans, animals or plants;

20 H. "pesticide" means a substance or mixture of
21 substances intended to prevent, destroy, repel or mitigate a
22 pest, including herbicides, insecticides, fungicides, plant
23 growth regulators, defoliants and desiccants, but excluding
24 cleaning products that do not contain pesticidal agents;

25 I. "plan" means the plan established through a

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1 school district's ecological pest management program for each
2 public school and for administrative spaces;

3 J. "public health official" means a person employed
4 by a public health agency of the state or a local government;

5 K. "public school health emergency" means an
6 unpredictable outbreak or infestation of a pest that has been
7 determined by a public health agency to be a disease vector or
8 known health threat that has not been controlled by nontoxic
9 practices and methods or by permitted pesticides;

10 L. "public school health emergency declaration"
11 means an order of a public health official that there is a
12 public school health emergency that requires the use of
13 unpermitted indoor or outdoor pesticides to stop the threat to
14 human health;

15 M. "school district" includes charter schools; and

16 N. "school grounds" means the outside area of a
17 public school, including lawns, playgrounds and sports fields."

18 SECTION 3. A new section of the Public School Code is
19 enacted to read:

20 "[NEW MATERIAL] ECOLOGICAL PEST MANAGEMENT COORDINATOR--
21 DUTIES.--Each school district shall designate an "ecological
22 pest management coordinator" who is responsible for carrying
23 out the school district's ecological pest management program
24 and the plans developed in accordance with that program. The
25 coordinator shall:

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1 A. serve as the local superintendent's or head
2 administrator's designee to implement the administrative spaces
3 plan;

4 B. oversee the implementation of each public
5 school's plan;

6 C. assist the environmental protection division of
7 the department of environment in monitoring the school
8 district's ecological pest management program and plans
9 implemented pursuant to the program and provide information to
10 the division as requested;

11 D. act as a contact for inquiries about the
12 ecological pest management program or plans implemented
13 pursuant to the program;

14 E. maintain and make available upon request to
15 school personnel, parents and other interested persons material
16 safety data sheets, labels and fact sheets or other official
17 information related to the permitted indoor and outdoor
18 pesticides that may be used in the school district;

19 F. keep informed on federal and state chemical
20 health and safety information and contact information and
21 maintain contact with federal and state pest management system
22 experts;

23 G. maintain the scheduling of all pest management
24 for public schools;

25 H. obtain periodic updates and training from state

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1 pest management experts;

2 I. oversee approval of emergency pesticide
3 applications in coordination with the environmental protection
4 division and the public health official responsible for a
5 public school health emergency declaration; and

6 J. coordinate the maintenance of all pesticide use
7 data for each pesticide used, including permitted and emergency
8 pesticides, at each public school, ensuring maintenance and
9 public accessibility of such records for at least three years
10 after the date on which the pesticide is first applied."

11 SECTION 4. A new section of the Public School Code is
12 enacted to read:

13 "[NEW MATERIAL] ECOLOGICAL PEST MANAGEMENT PROGRAM--
14 DEPARTMENT, SCHOOL DISTRICT AND PUBLIC SCHOOL DUTIES.--

15 A. The department, in consultation with the
16 environmental protection division of the department of
17 environment, the New Mexico department of agriculture and other
18 state agencies and pesticide experts, shall provide sample
19 ecological pest management programs that may be modified by
20 school districts to prepare plans for individual public schools
21 and administrative spaces. Copies of the ecological pest
22 management program and the attendant plans shall be provided to
23 the department of environment, which shall monitor the
24 implementation of the ecological pest management program.

25 B. The ecological pest management program and

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1 attendant plans shall rely on preventive and treatment methods
2 that include:

3 (1) use of cultural practices, sanitation,
4 mechanical management, structural repairs, habitat
5 manipulation, biological controls and other nonchemical methods
6 to prevent and manage pests to threshold levels;

7 (2) use of permitted indoor pesticides and
8 permitted outdoor pesticides only after nontoxic practices have
9 been exhausted; and

10 (3) requirements for regular evaluations of
11 the effectiveness of current pest prevention and management
12 approaches and consideration of additional preventive measures
13 to minimize any chemical use.

14 C. At the beginning of each school year, each
15 public school and the coordinator shall include a notice of the
16 public school's or coordinator's plan on the public school's or
17 school district's website or through other forms of
18 notification provided for in the Public Schools Pesticide
19 Management Act.

20 D. The school district shall annually review its
21 ecological pest management program to evaluate how well its
22 pest prevention and management objectives are being met and to
23 identify areas where improvement is needed. The report of the
24 review shall be provided to the local school board and made
25 available to the public upon request. Summary information and

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1 notice of the annual report's availability shall be provided
2 along with the notice of the school district's ecological pest
3 management program. The report shall contain the following
4 information for each public school and administrative space:

- 5 (1) quantities of each pesticide by type
6 applied during the year;
- 7 (2) target pests for each pesticide used;
- 8 (3) cost of the school district's ecological
9 pest management program for the year in review;
- 10 (4) number of emergency pesticide applications
11 made during the year;
- 12 (5) nonchemical pest prevention and control
13 measures used; and
- 14 (6) the public school and administrative
15 spaces plans for the coming year.

16 E. Each school district shall provide an
17 opportunity, at least once each year, at a regularly scheduled
18 board meeting, for the coordinator to report on public school
19 and administrative spaces plans and public comments received
20 regarding the plans.

21 F. Each public school, and the coordinator for
22 administrative spaces, shall maintain on-site for a period of
23 not less than three years public records of permitted and
24 emergency pesticides used each year."

25 SECTION 5. A new section of the Public School Code is
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1 enacted to read:

2 "[NEW MATERIAL] PESTICIDE USE--EMERGENCY PESTICIDE
3 APPLICATION--LIMITATIONS--NOTICE.--

4 A. Except as provided in the case of a public
5 school health emergency declaration, the only pesticides that
6 are allowed for use in or on public school or administrative
7 spaces are permitted indoor or permitted outdoor pesticides.
8 Nontoxic practices shall be used as the preferred method of
9 pest management, and permitted pesticides shall be used on an
10 ad hoc basis only after nontoxic practices have proven to be
11 ineffective for the particular pest at a given site.

12 B. If a school district suspects that it has a
13 public school health emergency, it shall contact the department
14 of environment and the appropriate public health official.
15 After consultation, if the public health official determines
16 that a public school health emergency exists, the public health
17 official shall issue a public school health emergency
18 declaration for the use of emergency pesticides. The
19 declaration shall:

- 20 (1) specify the public health threat;
- 21 (2) find that permitted indoor or outdoor
22 pesticides do not provide adequate public health protection;
- 23 (3) list the emergency indoor or outdoor
24 pesticides to be used to control the public health threat; and
- 25 (4) specify the duration of the declaration.

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1 C. Only public applicators or commercial
2 applicators licensed by the New Mexico department of
3 agriculture are allowed to apply emergency pesticides.

4 D. The emergency pesticide application shall not
5 occur in an area occupied or used at the time of application or
6 within the twenty-four-hour period after the application.

7 E. The public school, or the coordinator for
8 administrative spaces, affected by a public school emergency
9 health declaration shall provide notice of the public school
10 emergency health declaration and the application of emergency
11 pesticides to parents, school personnel, surrounding
12 neighborhoods and the general public by written notice sent
13 home with students and notification through the public school's
14 or school administration's email lists of parents and school
15 personnel and on its website, its social media account, if
16 applicable, and the general media in the community. The public
17 school or coordinator shall post a notice on the building or
18 grounds to be treated with emergency pesticides before the
19 emergency application occurs. Notifications shall be provided
20 at least forty-eight hours in advance of the emergency
21 pesticide application, if practicable, or as soon as possible
22 if a shorter time frame for emergency application is required.
23 Website, social media and local media notifications shall
24 continue for at least twenty-four hours after the emergency
25 pesticide application. Notices shall include the:

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- 1 (1) location of the emergency pesticide
- 2 application;
- 3 (2) date or dates of application;
- 4 (3) target pest;
- 5 (4) name of the active ingredient of the
- 6 pesticide being applied;
- 7 (5) brand name of the product and copy of the
- 8 product label; and
- 9 (6) name and contact information of the
- 10 coordinator and a statement that the coordinator is available
- 11 to parents and school personnel for information and comment.

12 F. The coordinator shall work with the public
13 schools and the school district to modify applicable plans and
14 the ecological pest management program to minimize future
15 applications of emergency pesticides."

16 SECTION 6. A new section of the Public School Code is
17 enacted to read:

18 "[NEW MATERIAL] EXEMPT PESTICIDE MATERIALS AND
19 ACTIVITIES.--The following pesticidal materials and activities
20 are exempt from the provisions of the Public Schools Pest
21 Management Act:

- 22 A. commercial agriculture;
- 23 B. pet supplies, such as shampoos and tick and flea
- 24 treatments, when used in the manner specified by the
- 25 manufacturer;

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1 C. disinfectants, germicides, bactericides,
2 miticides and virucides when used in the manner specified by
3 the manufacturer;

4 D. swimming pool supplies when used in the manner
5 specified by the manufacturer;

6 E. general use paints, stains and sealants when
7 used in the manner specified by the manufacturer;

8 F. rodent control supplies when used in bait boxes
9 that prevent secondary poisoning; and

10 G. management of noxious weeds pursuant to the
11 Noxious Weed Control Act, the Noxious Weed Act of 1963 or the
12 Noxious Weed Management Act."

13 SECTION 7. A new section of Chapter 74 NMSA 1978 is
14 enacted to read:

15 "[NEW MATERIAL] PUBLIC GROUNDS--LIMITING PESTICIDE
16 USAGE.--

17 A. As used in this section:

18 (1) "division" means the environmental
19 protection division of the department of environment;

20 (2) "emergency pesticide" means a pesticide
21 that is not a permitted outdoor pesticide and that is more
22 toxic than a permitted outdoor pesticide;

23 (3) "local government" does not include school
24 districts or charter schools;

25 (4) "permitted outdoor pesticide" means:

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1 (a) a pesticide classified by the United
2 States environmental protection agency as a minimum risk
3 pesticide; and

4 (b) a pesticide containing no active
5 ingredients other than those found in the national organic
6 program's national list of allowed and prohibited substances;

7 (5) "pest" means an insect, rodent, nematode,
8 fungus, weed or other form of terrestrial or aquatic animal or
9 plant life or a virus, bacteria or other microorganism that has
10 a deleterious affect on humans, animals or plants;

11 (6) "pesticide" means a substance or mixture
12 of substances intended to prevent, destroy, repel or mitigate a
13 pest, including herbicides, insecticides, fungicides, plant
14 growth regulators, defoliants and desiccants, but excluding
15 cleaning products that do not contain pesticidal agents;

16 (7) "public grounds" means real property
17 owned, managed or leased by the state or a local government
18 that is used for outdoor recreation or exercise, street
19 medians, public rights of way and other outdoor real property
20 used by the public;

21 (8) "public grounds emergency" means an
22 unpredictable outbreak or infestation of a pest that has been
23 determined by a public health officer to be a disease vector or
24 known public health threat that has not been controllable by
25 nontoxic practices or by permitted pesticides;

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1 (9) "public grounds emergency declaration"
2 means an order issued by a public health officer of the
3 department of health for the state or the public health officer
4 designated by the governing body of a local government to
5 declare public grounds emergencies, which declaration allows
6 for the use of emergency pesticides; and

7 (10) "public health officer" means a person
8 who is employed by a public health agency of the state or local
9 government.

10 B. Except as otherwise provided in this section,
11 only nontoxic practices or permitted outdoor pesticides may be
12 used on or applied to public grounds.

13 C. When a state agency or local government suspects
14 that it has a public grounds emergency, it shall consult with
15 the division, the New Mexico department of agriculture and the
16 public health official. After consultation, the public health
17 official may issue a public grounds emergency declaration that:

18 (1) specifies the public health threat;

19 (2) finds that permitted outdoor pesticides do
20 not provide adequate public health protection;

21 (3) lists the emergency outdoor pesticides to
22 be used to control the public health threat; and

23 (4) specifies the duration of the declaration.

24 D. Only public applicators or commercials licensed
25 by the New Mexico department of agriculture are allowed to

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1 perform an emergency pesticide application on public grounds.

2 E. Except as otherwise provided in this subsection,
3 prior to an emergency pesticide application, the public health
4 officer shall give the public forty-eight hours' notice through
5 reasonable means, including the websites and social media
6 accounts of the public health agency and the state or local
7 government agency responsible for the public grounds; provided
8 that if the forty-eight hours' notice is not practicable,
9 physical notice shall be posted at the public grounds being
10 treated as soon as possible but no later than the day of the
11 emergency pesticide application and the public health agency
12 shall ensure broader notification to the public through
13 notification of media in the community from the time of initial
14 notification to at least twenty-four hours after the emergency
15 pesticide application. A copy of each notice of an emergency
16 pesticide application shall be maintained by the state or local
17 government for a period of five years. The notice shall
18 include the:

- 19 (1) location of the emergency pesticide
20 application;
- 21 (2) date or dates of application;
- 22 (3) nature of the public health threat and the
23 target pest to be eradicated;
- 24 (4) name of the active ingredient of the
25 unpermitted pesticide;

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1 (5) brand name of the product and a copy of
2 the product label; and

3 (6) name and contact information of the state
4 or local government agency that controls the public grounds.

5 F. The following pesticidal materials and
6 activities are exempt from the provisions of this section when
7 used in the manner specified by the manufacturer of the
8 materials:

9 (1) commercial agriculture;

10 (2) pet supplies, such as shampoos and tick
11 and flea treatments;

12 (3) disinfectants, germicides, bactericides,
13 miticides and virucides;

14 (4) swimming pool supplies;

15 (5) general use paints, stains and sealants;

16 (6) rat and rodent control supplies when used
17 in the bait boxes provided by the manufacturer to prevent
18 secondary poisoning; and

19 (7) management of noxious weeds pursuant to
20 the Noxious Weed Control Act, the Noxious Weed Act of 1963 or
21 the Noxious Weed Management Act."

22 SECTION 8. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2021.