

## OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Agriculture, Conservation and Forestry  
From: Karen S. Nadeau, Legislative Analyst  
Date: April 8, 2021  
Subj: **LD 524** An Act To Require Schools To Submit Pest Management Activity Logs to the Board of Pesticides Control and the Posting of Inspection Results for the Purpose of Providing Information to the Public

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- Establishes in law certain requirements of the Department of ACF, Board of Pesticides Control related to pest management on school property.
- Requires:
  - a school to maintain a pest management activity log related to the application of pesticides.
  - this information to be provided annually to the board
  - the board to post the information on its publicly accessible website.
  - that the board post on its publicly accessible website a list of all board inspections of a school's use of pesticides and the results of those inspections.

### TESTIMONY

**Proponents:** *Department of Agriculture, Conservation and Forestry (ACF); Maine School Boards Association; Written only: Maine Education Association; Residents of Waldoboro and Waldoboro*

- BPC's rule Chapter 27, Standards for the Pesticide Applications and Public Notification in Schools – all public and private schools are required to adopt IPM policies and practices.
- Schools are required to notify parents and staff, and signs must be posted in advance of most pesticide applications done during the school year.
- Any parent or community member can view pest activity and pesticide use records upon request of the school.

**Opponents:** *Maine School Superintendents Association; Written only: Northern Turf Management*

- Schools are already required to notify the public and keep logs on the use of pesticides.
- Posting this information publicly across the board is unnecessary.

**NFNA:** *None*

### NOTES:

#### **128<sup>th</sup> Legislature - LD 174, AA To Limit the Use of Pesticides on School Grounds**

- ACF Committee voted unanimously OTP-A; LD 908 is similar to the OTP-A report in 128<sup>th</sup>.
- LD 174 was passed to be enacted in the House. It was placed on the Special Appropriations Table in the Senate. It was carried over to the 2<sup>nd</sup> Regular Session and it died on adjournment.

#### **129<sup>th</sup> Legislature – LD 908, AA To Require Schools To Submit Pest Management Activity Logs and Inspection Results to the Board of Pesticides Control for the Purpose of Providing Information to the Public**

- ACF Committee voted unanimously OTP-A (fiscal note only amendment).
- LD 908 was placed on the Special Appropriations Table during the First Regular Session and carried over to the Second Regular and then died upon conclusion of the 129<sup>th</sup> Legislature.

## **SUGGESTED AMENDMENTS:**

- Sponsor suggested turning this Act into a Resolve
  - direct DACF, BPC to make this information more publicly available and to determine and develop the best methods to accomplish this; and
  - maybe limit to a few key most toxic/carcinogenic pesticides.
- Department also stated: “Because there will be questions on how to best design and implement this online reporting requirement, the committee may consider changing this bill to a Resolve directing the Board of Pesticides Control to research and implement workable methods for doing so in a manner that provides data in a clear and useful format.”

If the committee moves forward with the bill:

- Sponsor suggests:
  - provide a public health exemption as sometimes schools need to act quickly; and
  - exempt disinfectants since they are important in meeting COVID safety protocols.
- Department suggests:
  - clarifying the use of the term “species” – unclear whether means rodents, plants and insects solely – if a broader definition is intended, it could make reporting requirements extremely difficult and time-consuming to manage.
  - “school property” is not defined; “school grounds” is defined in Chapter 27 rule.
  - Strike “certification” numbers – BPC issues license numbers not certification numbers.

## **PRELIMINARY FISCAL IMPACT STATEMENT:** *Not yet received.*

- However, the fiscal note for LD 908 identified the required activity as a potential state mandate.

## **POTENTIAL STATE MANDATE:**

The Maine Constitution, Article IX, Section 21 (adopted in 1992), prohibits the State from requiring a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenues unless:

1. The State annually provides 90% of the funding; or
2. The Legislature votes to establish an exemption by a 2/3 vote of the elected membership of each chamber.

In accordance with the Constitution, the Legislature enacted implementing legislation (30-A MRSA §5685), which, among other things, clarifies that if the Legislature passes legislation that constitutes a State mandate and does not create an exception for that mandate or provide the required state funding, affected local units of government are not bound by the mandate.

## **Interpretation**

Whether a proposal falls within the terms of Article IX, Section 21 is sometimes the subject of debate. A proposal that may fall within the provision will be identified as a potential State mandate in the fiscal note prepared by the Office of Fiscal and Program Review, thus flagging the matter for further legislative consideration. If a committee makes a determination that a provision identified by the Office of Fiscal and Program Review as a potential mandate is not in fact a mandate, the committee may direct its analyst to draft language to insert in the summary of the committee amendment that states the committee’s determination.

## **Options**

If a proposal does constitute a mandate, the Legislature has various options it may pursue, including:

1. Amending the proposal to eliminate the requirement (for instance, making the expanded or modified activity optional);
2. Funding 90% of the necessitated additional local expenditures; or
3. Exempting the legislation from the funding requirement by a two-thirds vote of the elected members in each chamber of the Legislature. To accomplish this third option, a Mandate Preamble is added to the legislation stating that the legislation is being enacted as an exception to Article IX, Section 21.

As mentioned above, if the Legislature chooses none of these options and instead passes legislation that constitutes a State mandate without providing the funding or exempting the legislation from the funding requirement, affected local units of government are not bound by the mandate.