

Date of Hearing: March 29, 2023

**ASSEMBLY COMMITTEE ON APPROPRIATIONS**

Chris Holden, Chair

AB 363 (Bauer-Kahan) – As Amended March 6, 2023

Policy Committee: Environmental Safety and Toxic Materials      Vote: 7 - 2

Urgency: No      State Mandated Local Program: Yes      Reimbursable: No

**SUMMARY:**

This bill requires the Department of Pesticide Regulation (DPR) to issue a determination with respect to a reevaluation of neonicotinoid pesticides (neonics) when used on outdoor ornamental plants, trees, and turf, and to adopt control measures for those uses that are necessary to protect pollinating insects, aquatic ecosystems, and human health.

Specifically, this bill, among other things:

- 1) Requires, on or before July 1, 2024, DPR to issue a determination, taking into account the latest science, with respect to a reevaluation of neonics when used on outdoor ornamental plants, trees, and turf. States that DPR is not required to conduct a reevaluation of any use of neonics for the protection of agricultural commodities, as defined.
- 2) Requires the reevaluation to consider the impacts of neonics on pollinating insects, aquatic ecosystems, and human health. In performing the reevaluation, requires DPR to consider the cumulative impacts of exposure, as defined, to multiple neonics unless DPR can demonstrate with substantial evidence that one or more neonics do not share a common mechanism of toxicity and do not present risk of cumulative harm.
- 3) Requires, on or before July 1, 2026, DPR to adopt control measures for the use of neonics on outdoor ornamental plants, trees, and turf that are necessary to protect pollinating insects, aquatic ecosystems, and human health, as defined.

**FISCAL EFFECT:**

DPR estimates ongoing annual costs of approximately \$353,000 (DPR Fund) for two new positions to implement this bill. DPR is in the process of evaluating available scientific information with respect to which non-agricultural neonic uses may have adverse impacts. The department contends it will need to accelerate its evaluation, thereby necessitating two new staff to issue a determination by July 1, 2024, as required in this bill.

**COMMENTS:**

- 1) **Purpose.** According to the author:

A huge body of research links adverse health impacts and the decline in pollinator populations to the use of pesticides, particularly

neonicotinoids. Though we have seen steps to regulate these pesticides in our commercial fields, there has been little movement on non-agricultural uses. The European Union, Maine, New Jersey, and several other states have already banned or restricted these pesticides for non-agricultural uses. It's time to catch up to the rest of the world in protecting bee and human health. AB 363 will ensure DPR moves forward with these long-overdue regulations for neonicotinoids to protect pollinator and human health.

- 2) **Neonics.** Neonics are the most widely used class of insecticides in the world, representing 25% of the global insecticide market. According to the Natural Resources Defense Council, one of the co-sponsors of the bill, there is considerable research linking neonic use to pollinator declines and massive bee die-offs over the past two decades, threatening agricultural production in California. Neonics also contaminate soil, water, food, and plant life. DPR has detected neonics in the vast majority of urban water samples across the state. Widespread research has shown that neonics harm aquatic and terrestrial biodiversity and are linked to a variety of health risks and developmental harms.
- 3) **Reevaluation of Pesticide Registration in California.** DPR must register a pesticide product before it can be sold or offered for sale in California. State regulations require DPR to investigate reports of possible adverse effects to people or the environment resulting from the use of pesticides. If a significant adverse impact occurred or is likely to occur, regulations require DPR to reevaluate registration of the pesticide. If DPR determines the data demonstrates that use of the pesticide presents no significant adverse effects, DPR concludes the reevaluation without additional mitigation measures. If DPR finds additional mitigation measures are necessary, DPR places appropriate restrictions on the use of the pesticide to mitigate the potential adverse effects. If DPR concludes the adverse effects cannot be mitigated, DPR cancels or suspends the registration of the pesticide product(s).
- 4) **DPR's Reevaluation of Neonics.** In 2008, DPR received an adverse effects disclosure that showed potentially harmful effects of the neonic imidacloprid on pollinators. After investigating the disclosures, DPR placed certain pesticide products containing imidacloprid, and several other related neonic active ingredients, into reevaluation on February 27, 2009. As a result of the reevaluation, DPR determined that additional mitigation measures are needed to protect pollinators from the use of neonics in agricultural crops. DPR notes it is currently finalizing its regulation with an anticipated effective date of January 1, 2024.
- 4) **DPR's Evaluation of Non-Agricultural Uses of Neonics.** According to DPR, the department has begun its evaluation of which non-agricultural neonic uses may have significant adverse impacts to pollinators and aquatic environments. DPR expects to determine the potential degree of risk from those uses by the end of 2023. In addition, DPR is finalizing a human health Risk Characterization Document for all registered uses of imidacloprid. DPR states this work will inform next steps for mitigation. DPR estimates that in California, about 80% to 85% of neonic use and sales is for agricultural purposes and 15% to 20% is for non-agricultural purposes.
- 5) **Response to Veto Message.** In September 2022, Governor Newsom vetoed AB 2146 (Bauer-Kahan), which would have prohibited the sale, possession, or use of a neonic

pesticide for application to outdoor ornamental plants, trees, or turf. In response, supporters of the bill contend:

While the California Department of Pesticide Regulation (DPR) has proposed restrictions on neonic uses in agriculture to protect pollinators, the agency has so far not addressed neonic use in non-agricultural settings and has focused solely on risks to honey bees. Governor Newsom last year announced that DPR would begin its evaluation of non-agricultural neonic uses in 2023. AB 363 would ensure DPR finalizes regulations to protect people, pollinators, and ecosystems from non-agricultural neonic uses by July 1, 2026.

- 7) **DPR Fund Faces Deficits.** The DPR Fund supports roughly 90% of DPR's budget. The DPR Fund receives 20% of its revenues from pesticide-related licensing and registration fees and 80% from a mill assessment levied on pesticides. The mill assessment is applied to agricultural and non-agricultural pesticides at the point of first sale into the state. The assessment, which is currently a \$0.021 fee charged on each dollar of pesticide sales, has not changed in 17 years.

The DPR Fund has operated under a structural deficit in five out of eight years from fiscal year (FY) 2014-15 to FY 2021-22. According to the administration, the DPR Fund balance is estimated to be approximately \$8.54 million in FY 2023-23 and approximately \$1.73 million at the end of FY 2023-24. Absent any changes, the administration anticipates the DPR Fund, in FY 2024-25, will fall \$3.85 million short of current programmatic needs. This anticipated deficit is likely to be even greater when accounting for future programmatic needs.

The FY 2021-22 Governor's Budget proposed to restructure and increase the mill assessment to generate more revenue for DPR. This proposal was not included in the final budget. Instead, the FY 2021-22 budget included limited-term General Fund augmentations for various activities intended to support safe and sustainable pest management practices. This included \$1 million over two years for a study on the mill assessment to identify the appropriate structure, sources, and levels of funding that will allow the department to continue to fulfill its mission of protecting public health and the environment long-term. The mill assessment study is ongoing.

- 8) **Opposition.** Writing in opposition, a coalition of agricultural groups states, among other concerns:

...This coalition strongly objects to the obligation in AB 363 for DPR to promulgate regulations restricting neonicotinoid use in urban settings by July 2026. This is a substantial presupposition that regulations are necessary and the appropriate result of the mandated reevaluation. Science should dictate the review process and be the foundation and motivation for any regulatory decision-making process. We request the entirety of Section 12838(c)(3) as proposed be removed.