THE PRINCE GEORGE'S COUNTY GOVERNMENT

Office of Audits and Investigations

October 12, 2020

M E M O R A N D U M

TO: Robert J. Williams, Jr.
Council Administrator

William M. Hunt
Deputy Council Administrator

THRU: Josh Hamlin
Senior Legislative Budget and Policy Analyst

FROM: Alex Hirtle *AJH*
Legislative Budget and Policy Analyst

RE: Policy Analysis and Fiscal Impact Statement
CB-008-2020 Pesticides (Draft 2A)

CB-008-2020 (*sponsored by*: Councilmembers Dernoga and Ivey)

Assigned to Committee of the Whole (COW)

AN ACT CONCERNING PESTICIDES for the purpose of providing legislative intent and findings; providing definitions; providing for a certain posting and placement of signs; providing for certain signs by vendors; providing requirements for the notice and retail purchase of pesticides; providing for a certain posting of signs after the application of pesticides by a custom applicator; providing for a certain posting of signs after the application of pesticides by a property owner or tenant; providing for a certain written statement; providing for a certain notice about pesticides to a customer; providing for storage and handling of pesticides; providing for certain prohibited applications; providing for a certain prohibition on County-owned property; providing for integrated pest management on County property; providing for application in the County parks; providing for certain exceptions; providing for an outreach and education campaign; providing for regulations; providing for certain penalties; and generally relating to pesticides.

Fiscal Summary

Direct Impact:

Expenditures: Significant additional expenditures near-term, possibly offset by long-term cost savings.

Revenues: Potential additional revenues as a result of collected fines.

Indirect Impact:

Potentially positive.

Legislative Summary:

CB-008-2020, sponsored by Councilmembers Dernoga and Ivey, was presented on February 25th, 2020 and referred to the Committee of the Whole (COW). It was held in COW on July 14, 2020. CB-008-2020 declares the Council's concern with widespread use of pesticides in the County, and the associated health concerns- on humans, with the importance on children's health; animal life, including bees and other pollinators; and its effects on water quality and aquatic life. The legislation's goal is to inform the public about pesticide applications and minimize its use for cosmetic purposes, while not excluding it for agriculture use, circumstances of public safety, and other reasons.

The Bill requires public notice via sign postings on areas before and after pesticides are applied, with some exceptions. It also requires retailers of pesticides to provide these signs to their direct customers, as well as information on the dangers of pesticides and alternative products; retailers must also post a notice in the area of pesticide sales outlining the use of pesticides under County law, and pest control options under that law. Commercial, or *Custom* applicators will be required to provide customers an approved written statement and notice that provides the name(s) of the pesticide used; pesticide precautions; and agencies to contact for complaints, technical information, and medical emergencies regarding pesticide application.

The legislation requires the Health Department to provide the public with information pertaining to the sign notice provisions, as well as, when requested, specific information and safety precautions for the most commonly used pesticides. It restricts use of certain pesticides and requires the County and the Maryland-National Capital Park & Planning Commission (M-NCPPC) to develop plans in using less toxic and alternative methods in reducing insect infestations and cultivate healthy lawns, while minimizing potential hazards to people and other animals, including aquatic life. This plan includes a pesticide-free parks program facilitated through a turf management consultant. The legislation does allow for exceptions in using more toxic pesticides, such as agricultural use, protection of public health, and other instances that would ultimately protect the public.

The Bill also has a public outreach and education component to it, which will be executed by the Department of the Environment (DoE). This information would include best practices for pesticide-free lawns and products that minimize the use of registered pesticides. Additionally, the legislation spells out storage and handling protocol of pesticides, commercial and private applicator responsibilities, and outlines violations and an associated two-tier penalty system.

It is Council staff's understanding that a proposed Draft 2A will be discussed in the COW meeting changes to the Bill included in the proposed Draft 2A are identified below.

Current Law/Background:

A similar version of this legislation was previously introduced as CB-065-2019, and was sponsored by Councilmembers Dernoga, Anderson-Walker, Ivey, Taveras, and Streeter. It was presented on September 24th, 2019, and tabled in committee.

The County currently has some regulation and enforcement of pesticide applications (Subtitle 12.05.04 section 12) by the Health Department which requires posting of signs 24 hours prior to and immediately after application. Signs must remain posted for 3-7 days after pesticide application. Reasonable exceptions, like golf courses and utility rights-of-way which have limited public access and may not abut residential areas, are included in the legislation. The Health Department is also required to provide specific information, like safety precautions for commonly used pesticides to the public, upon request. Pesticide applicators are required to give their customers contact information of the appropriate government agency that takes complaints concerning pesticide applications, as well as a statement indicating applicators must be properly licensed by the Maryland Department of Agriculture, the names of pesticides they used, and list of precautions. Properties operated by the Washington Suburban Sanitation Commission (WSSC), The Maryland-National Capital Park & Planning Commission (M-NCPPC), and Department of Public Works & Transportation (DPW&T) may be exempted of these regulations if the adverse effects of pesticides application are minimal on the public, or if the compliance to these regulations is burdensome and/or impractical.

This legislation was passed in 1985 (CB-091-1985) and has not been updated since.

Both CB-008-2020 and the previously introduced CB-065-2019 closely model the Montgomery County (Maryland) Healthy Lawns Act (52-14) which passed in 2015, was overturned by a circuit court in 2017, and was then reversed by Maryland's Court of Special Appeals earlier this year. The Maryland Court of Appeals denied a petition for certiorari this summer, so local governments in Maryland have some ability to regulate pesticides more stringently than the State does.

Resource Personnel:

Council District 1 Staff

Discussion/Policy Analysis:

This Bill would significantly expand the current County law regulating pesticides. It clearly defines the difference between "Listed Pesticide", which is: (1) a pesticide with active ingredients recommended by the National Organic Standards Board (NOSB); or (2) designated as a "minimum risk pesticide" under the Federal Insecticide, Fungicide, & Rodenticide Act (FIFRA), or exempt of EPA Registration under FIFRA 25 (b), and "Registered Pesticide", which is a pesticide registered by the U.S. Environmental Protection Agency (EPA) and labeled pursuant to FIFRA. The difference between these two classes of pesticides is important because *listed pesticides* go before another level of review by the NOSB experts that conduct health and safety tests, resulting in the least toxic pesticide products on the market; *registered pesticides* only undergo EPA review through industry data that may not evaluate certain impacts on health and environmental effects on humans and other animal life.[1] These two classes of pesticides, however, have

[1] Beyond Pesticides staff, Washington, DC

been under federal regulations for decades, and the implementation of controls on these pesticide was done through peer-reviewed science. [2]

Additionally, the legislation prohibits the application of a *registered pesticide* (but not a *listed pesticide*) on County-owned property and certain private property (lawns, playgrounds, mulched recreation areas, children's facilities or the grounds of children's facilities), for cosmetic purposes, with listed exceptions. These prohibitions would encourage the use of listed pesticides, which again have been scrutinized under further health and safety reviews and have been designated as "minimum risk pesticides". The exceptions in prohibiting the use of registered pesticides would include application to: (1) control weeds (as defined); (2) control invasive species listed in a regulation; (3) control disease vectors; (4) control biting or stinging insects or stinging plants; (5) control organisms that threaten the health of trees or shrubs; (6) maintain property as part of efforts by a public utility to comply with applicable vegetation management provisions of any federal, state, or local law or regulation; (7) control indoor pests, if applied around or near the foundation of a building; (8) control pests while engaged in agriculture; and (9) control a pest outbreak that poses an imminent threat to human health or prevent significant economic damage if a registered pesticide is not used.

Neonicotinoid pesticides are a class of neuro-active insecticides chemically similar to nicotine. They act on certain kinds of receptors in the nerve synapse which makes them especially toxic to insects.[3] They are systematic insecticides, which means that once they are applied they are taken in by plants (usually by the root system) and are expressed in their pollen and dew. Any pollinator, including bees, butterflies, and hummingbirds can be affected by this class of insecticides, and there is evidence that colony collapse disorder (mass disappearance of worker bees) is linked to these insecticides. [4] The legislation prohibits a County employee or County contractor from using neonicotinoid pesticides, given the evidence of the effect it has on pollinators. Exceptions are given for agricultural use, and the outlined exceptions for registered pesticides which include public safety and pest outbreaks.

Integrated pest management is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices.[5] These practices may include pest monitoring, biological controls, trapping and mechanical controls, and the use of least toxic pesticides, but allowing registered pesticide use as a last resort. The legislation calls for the Health Department to adopt an integrated pest management control program for all property owned by the County. The legislation sets out requirements for such a program, including training for each employee who is responsible for pest management.

County Parks are subject to this legislation by the implementation of a pesticide-free parks program, which will include the maintenance of certain parks entirely without the use of registered pesticides other than listed pesticides. The Maryland-National Capital Park & Planning Commission (M-NCPPC) will be required to take steps that include reducing the use of registered pesticides other than listed pesticides on playing fields, a pilot program consisting of at least five playing fields maintained without the use of registered pesticides other than listed pesticides, and maintaining all other playing fields using integrated pest management techniques. Exceptions again include the control of weeds (as defined); control invasive species listed in a regulation; control disease vectors; control biting or stinging insects or stinging plants; control organisms that threaten the health of trees or shrubs; maintain property as part of efforts by a public

[2] Statement from National Association of Landscape Professionals
[3] https://citybugs.tamu.edu/factsheets/ipm/what-is-a-neonicotinoid/
[4] Beyond Pesticides staff, Washington DC
[5] https://www.epa.gov/safepestcontrol/integrated-pest-management-ipm-principles

utility to comply with applicable vegetation management provisions of any federal, state, or local law or regulation; control indoor pests, if applied around or near the foundation of a building; control pests while engaged in agriculture; and control a pest outbreak that poses an imminent threat to human health or prevent significant economic damage if a registered pesticide is not used. This policy underlines the concerns that registered pesticides have on human and animal life, especially on children and younger adults who may utilize playing fields more frequently.

The legislation's provisions for signage being posted before and after application of pesticides provides for the public's notice of where and when pesticides have been applied. This provision applies to both *residential* (private) *applicator* as well as a *custom* (commercial) *applicator*. The signs will be standardized by the Health Department for ease of providing information; exceptions to the signage will be made by the Health Officer, and may include properties that have restricted access or removed from public proximity, such as golf courses, and utility rights-of-way.

The legislation calls for, as a policy of this bill, additional resources to the public on information about pesticides and its application. This includes the Health Officer's requirement to provide information which explains the notice provisions; retailers' requirement to provide signage to direct customers with details of pesticides, including precautions and alternative products; and an outreach and education campaign implemented by the Department of the Environment (DoE). Additionally, *custom applicators* will give customers (after application) precautions of pesticides, safe practices of pesticide use, licensing information of applicators, a list of pesticides used, and contact information for County departments for assistance or to file a complaint. This additional information should provide for a better-informed public that can make educated decisions on pesticide applications and steps to ensure safety measures regarding pesticides.

There are also retail handling and storage requirements outlined in the legislation. These instructions should provide for better guidance and practices for store owners and staff for the transport, display, and clean-up of pesticides in the retail environment.

The section on penalties for violations (12-161.22) has been revised to include two tiers of violations: a violation of the legislation includes a $50 fine for first offense, $100 for second offense, and $250 for a third offense. Each day of a violation is a separate offense. A specific violation of section 12-161.16 which refers to prohibited applications of pesticides carries higher fines of $500, $1,000, and $1,000 fines for first, second, and each subsequent violation respectively. This tiered approach provides lower fines for violations such as failure to post signs before or after application, whereas the higher fines would be strictly for an applicator that applied a prohibited pesticide under the legislative provisions.

Note: CB-008-2020 underwent revisions in a proposed Draft DR-2A that was produced and includes the following changes:

- Includes a definition of "Competitive Field" and revises the definitions of "Playground" and "Playing Field".
- Crosses through Sect. 12 161.08, which specifies posting of signs before and after pesticides application, as well as Section 12 161.12 Written Statement.
- Under Section 12 161.17, Maryland-National Park & Planning Commission (M-NCPPC) Parks, adds data from Montgomery County Pilot Program will be applied in lieu of an additional pilot program of data of at least two playing fields that are maintained without use of Registered Pesticides; a requirement by M-NCPPC to any other municipality which provides pest application to M-NCPPC property to act with the same or higher standards as M-NCPPC in accordance with the Section; when posting pesticides application, the main ingredient of the pesticide is listed along with the common name of the pesticide; exceptions for allowance of Registered Pesticide

use include maintaining of golf courses and competition fields (but includes phasing out use by December 31st, 2024).

- Under Section 12 161.19, Regulations, in Outreach & Education Campaign, materials will be in English, and translated into Spanish.

Under Section 12 161.19, Regulations, the items in the legislation will be carried out in resolution form by the County Executive by September 30th, 2021. Regulations adopted under this section shall include minimum size or quantity, and type of pesticide subject to Section 12 161.09; the Health Department shall submit the first list of invasive species to the County Council for approval by September 30th, 2021.

Fiscal Impact:

- *Direct Impact*

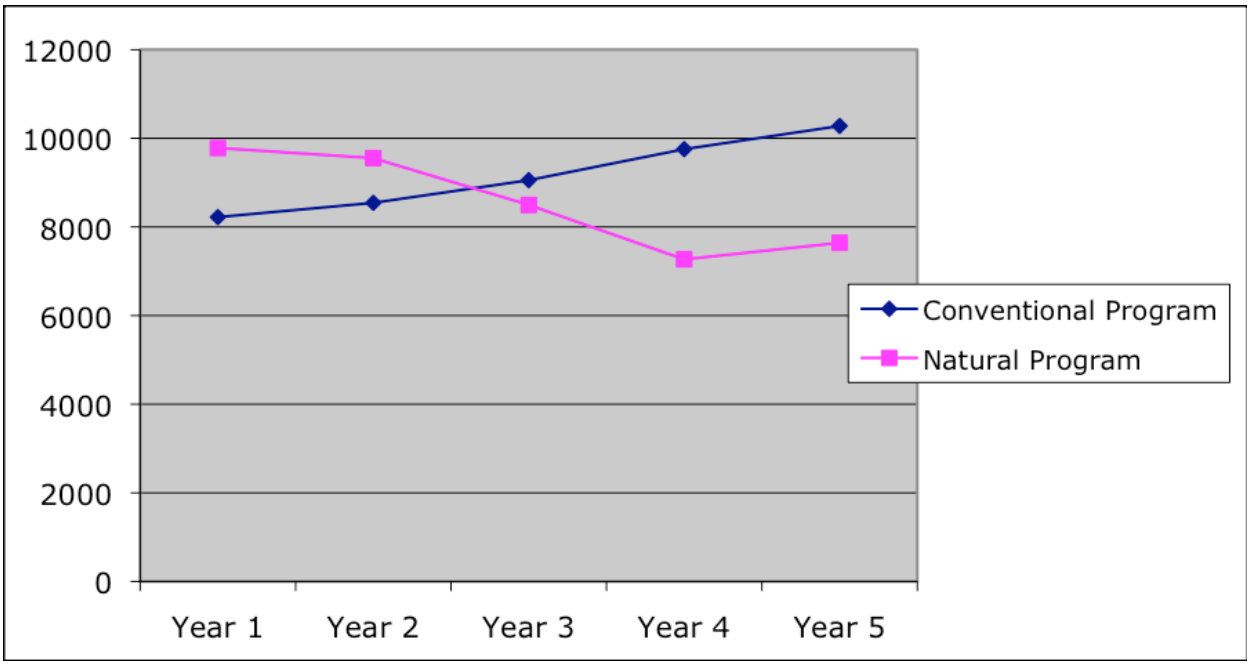
Enactment of CB-008-2020 will have an adverse fiscal impact on the County related to the public outreach and education campaign required to be established and implemented before and during the implementation of the regulations, as a result of any increase in administrative tasks on staff. The required training of staff who are responsible for pest management will also increase the amount of adverse fiscal impact incurred by the County. There may be a positive fiscal impact on the County related to the collection of civil fines issued to violators of these regulations

Note: Office of Finance provided a Fiscal Note on October 9th that stated the estimated annual cost of CB-008-2020 would be $330,000, of which $325,000 is personnel related costs.

The Maryland-National Capital Park and Planning Commission (M-NCPPC) reported that there would be a significant negative fiscal impact on the Department of Parks & Recreation if CB-008-2020 was enacted and implemented. The Commission representative cited the need for additional staff, more hours of maintenance, along with purchasing additional equipment and higher-priced organic products as part of the fiscal impact. They also noted the likely need for outside contractors and experts in setting up and maintaining the organic turf pilot programs. *No specific amount was given for the estimated cost increases.*

There is strong evidence that while there may be some short-term increases in costs from organic practices, in the long-run costs decline when comparing a program of using conventional pesticides as compared to a natural program.[6] Beyond Pesticides has released a cost-comparison fact sheet that documents the techniques other institutions and municipalities have undertaken in regards to implementing organic turf management. In the below chart, the non-profit Grassroots Environmental Education concluded that once established, organic turf management results in savings greater than 25% as opposed to using chemical management processes. As the chart indicates, initial costs for organic turf management are higher in years one and two, but the cross-over in costs occurs in year three.

[6] https://www.beyondpesticides.org/assets/media/documents/documents/Cost%20Comparison.pdf



http://www.grassrootsinfo.org/turfcomparisonreport.pdf

Harvard University's experience with its organic approach on campus found similar results- initial costs were required to train staff, purchase equipment, and improve soil health, but at maturity of the program, costs are now expected to stay the same as its previous chemical-based program.[7]

Furthermore, the City of South Miami's two-year pilot program required city staff and contractors to follow practices to eliminate toxic pesticide use and limit soil inputs to only organic-certified products. A city memorandum described the success of this initiative to "cut down on its waste-footprint significantly at relatively little expense and providing a model for other local governments to use as guidance."[8]

Given the research and real-life models of entities that have transitioned from pesticide-based processes to organic turf management, and the flexibility that CB-008-2020 provides with Integrated Pest Management and exceptions in usage of registered pesticides, there is the likelihood that over time, the annual costs related to this legislation will decline to the point of being nearly the same as or lower than what the County is currently spending.

While enactment of CB-008-2020 will likely result in a significant negative fiscal impact in the near-term, this time, we are unable to reliably determine the net *long-term* fiscal impact which may result from the enactment of CB-008-2020.

- *Indirect Impact*

Enactment of CB-008-2020 may have a positive indirect fiscal impact by protecting the environment, the health of County residents, and the food and water supply, thereby encouraging economic growth

[7] http://www.treewiseorganics.com/HarvardYardProject2-25-09.pdf
[8] https://beyondpesticides.org/assets/media/documents/SouthMiami_FL_Organicordinance.pdf

and development within the County. This could include lower levels of toxicity in groundwater supplies, reduced incidents of adverse reactions and health concerns due to pesticide applications (for applicators and residents), reduced impact on animals (especially pollinators), and a notable incentive for people and businesses to locate in the County given the commitment to reduce toxic pesticides and inform residents of alternative pest control.

Appropriated in the Current Fiscal Year Budget

No.

Issues for Committee Consideration:

- Clarity in definitions and exceptions are critical to the understanding and implementation of this legislation.
- The Bill has a two-tiered fine system, fines being notably lower for failing to post notice of a parcel that will or has been sprayed verse application of a prohibited pesticide (Sec. 12-161.22).
- The legislation does not prohibit the retail sale of registered pesticides within the County, or the sale of registered pesticides to residents via the internet; under certain circumstances, home-owners may purchase registered pesticides without being aware of the County's restrictions.
- Municipal property may be exempt from this legislation.

Effective Date of Proposed Legislation:

Sections 12-161.08, 12-161.13, and 12-161.17 will take place forty-five (45) days after it becomes law.

Notwithstanding Section 4 of this Act, this Act will take place on March 31st, 2022.

If you require additional information, or have questions about this fiscal impact statement, please reach me via phone or email.