

# Senate Bill 637

Sponsored by Senator BONAMICI; Senators DINGFELDER, HASS, MONNES ANDERSON, Representatives BARKER, BRUUN, CANNON, GREENLICK, KOMP, WITT

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires adoption of integrated pest management plans for schools. Specifies certain requirements for integrated pest management plans. Provides for State Department of Agriculture enforcement. Makes public pesticide applicator license requirements applicable to pesticide applications at school campuses.

## A BILL FOR AN ACT

Relating to pest management for schools; creating new provisions; and amending ORS 634.116.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Sections 2 to 9 of this 2009 Act are added to and made a part of ORS chapter 634.**

**SECTION 2. As used in sections 2 to 9 of this 2009 Act:**

(1) **"Campus" means the buildings, other structures, playgrounds, athletic fields and parking lots of a school and any other areas on the school property that are accessed by students on a regular basis.**

(2) **"Governing body" means a board of directors, agency or other body or person having policy making and general oversight responsibility for a community college district, education service district, school district, other unit of education governance, private school or other educational entity.**

(3) **"Integrated pest management plan" means a proactive strategy that:**

(a) **Focuses on the long-term prevention or suppression of pest problems through economically sound measures that:**

(A) **Protect the health and safety of students, staff and faculty;**

(B) **Protect the integrity of campus buildings and grounds;**

(C) **Maintain a productive learning environment; and**

(D) **Protect local ecosystem health;**

(b) **Focuses on the prevention of pest problems by working to reduce or eliminate conditions of property construction, operation and maintenance that promote or allow for the establishment, feeding, breeding and proliferation of pest populations or other conditions that are conducive to pests or that create harborage for pests;**

(c) **Incorporates the use of sanitation, structural remediation or habitat manipulation or of mechanical, biological and chemical pest control measures that present a reduced risk or have a low impact;**

(d) **Includes regular monitoring and inspections to detect pests, pest damage and un-sanctioned pesticide usage;**

(e) **Evaluates the need for pest control by identifying acceptable pest population density**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 levels;

2 (f) Monitors and evaluates the effectiveness of pest control measures;

3 (g) Excludes the application of pesticides on a routine schedule for purely preventive  
4 purposes, other than applications of pesticides designed to attract or be consumed by pests;

5 (h) Excludes the application of pesticides for purely aesthetic purposes;

6 (i) Includes school staff education about sanitation, monitoring and inspection and about  
7 pest control measures;

8 (j) Gives preference to the use of nonchemical pest control measures; and

9 (k) Allows the use of low-impact pesticides if nonchemical pest control measures have  
10 proven ineffective.

11 (4) "Low-impact pesticide" means a pesticide product or active ingredient that:

12 (a) Does not have the signal words "warning" or "danger" on the label; and

13 (b) Is not on the list adopted by the State Department of Agriculture under section 9 (4)  
14 of this 2009 Act.

15 (5) "Pest" means:

16 (a) An insect or other arthropod;

17 (b) A weed, moss, slime or mildew or a plant disease caused by a fungus, bacterium or  
18 virus;

19 (c) A nematode, snail, slug, rodent or predatory animal;

20 (d) Other forms of plant or animal life that may infest or be detrimental to vegetation,  
21 humans, animals, structures, managed landscapes or other human environments; or

22 (e) Other plants, animals or organisms identified by the State Department of Agriculture  
23 by rule as a pest.

24 (6) "Pest emergency" means an urgent need to eliminate or mitigate a pest situation that  
25 threatens the health or safety of students, staff, faculty members or members of the public  
26 using the campus.

27 (7) "Registration number" means the pesticide registration number assigned by the  
28 United States Environmental Protection Agency.

29 (8) "School" means:

30 (a) A facility operating an Oregon prekindergarten or a federal Head Start program;

31 (b) A public or private educational institution offering education in all or part of  
32 kindergarten through grade 12;

33 (c) An education service district as defined in ORS 334.003;

34 (d) A community college as defined in ORS 341.005;

35 (e) The Oregon School for the Blind;

36 (f) The Oregon School for the Deaf; and

37 (g) A regional residential academy operated by the Oregon Youth Authority.

38 **SECTION 3.** (1) The governing body responsible for a school shall adopt an integrated  
39 pest management plan for use on the campuses of the school. The governing body shall also  
40 adopt provisions for:

41 (a) Designating an integrated pest management plan coordinator;

42 (b) Identifying plan coordinator responsibilities;

43 (c) Giving notices under section 7 of this 2009 Act;

44 (d) Retaining pesticide application records under section 8 of this 2009 Act;

45 (e) Providing a process for responding to inquires and complaints about noncompliance

1 with the integrated pest management plan; and

2 (f) Conducting outreach to the school community about the school's integrated pest  
3 management plan.

4 (2) If a governing body has control over only part of a building, a structure or property  
5 where a campus is located, the governing body may limit an integrated pest management  
6 plan to those parts of the building, structure or property over which the governing body ex-  
7 erts substantial control.

8 (3) A governing body is not required to adopt an integrated pest management plan for  
9 off-campus buildings, structures or property, notwithstanding any incidental use for in-  
10 struction.

11 (4) Unless a governing body expressly provides otherwise, the application of a germicide,  
12 disinfectant, sanitizer, deodorizer, antimicrobial agent or insecticidal soap at a campus is not  
13 subject to the requirements for a pesticide application under an integrated pest management  
14 plan. However, this subsection does not permit the application at a campus of a germicide,  
15 disinfectant, sanitizer, deodorizer, antimicrobial agent or insecticidal soap that is a pesticide  
16 other than a low-impact pesticide.

17 **SECTION 4.** (1) The governing body shall provide for the designation of one or more  
18 persons as integrated pest management plan coordinators for the governed schools. A plan  
19 coordinator must be an employee of the governed district, unit, school or entity or be an  
20 independent contractor that is licensed as a pesticide operator. Each school shall have the  
21 services of at least one integrated pest management plan coordinator. A plan coordinator  
22 may serve more than one school. The responsibilities of the plan coordinator shall include,  
23 but need not be limited to:

24 (a) Giving notice and posting warnings under section 7 of this 2009 Act;

25 (b) Overseeing pest prevention efforts;

26 (c) Providing for the identification and evaluation of pest situations;

27 (d) Determining the means of appropriately managing pest damage that will cause the  
28 least possible hazard to people, property and the environment;

29 (e) Ensuring the proper and lawful performance of pesticide applications;

30 (f) Evaluating pest management results; and

31 (g) Keeping records as required by section 8 of this 2009 Act.

32 (2) A plan coordinator shall complete not less than six hours of training each year. The  
33 training shall include at least a general review of integrated pest management principles and  
34 the requirements of sections 2 to 9 of this 2009 Act.

35 **SECTION 5.** If a school has followed the integrated pest management plan and non-  
36 chemical pest control measures have proved ineffective, subject to section 6 of this 2009 Act  
37 the integrated pest management plan coordinator may authorize the application of a low-  
38 impact pesticide. The low-impact pesticide application must be made by a pesticide applicator  
39 or by a public applicator. The use of a pesticide applicator or public applicator to make an  
40 application does not cancel, alter or reassign any of the duties imposed under section 7 or 8  
41 of this 2009 Act.

42 **SECTION 6.** (1) Except as provided in subsection (2) of this section, a pesticide may not  
43 be applied to an area of a campus where the school expects students to be present before the  
44 reentry time specified in the pesticide product labeling or, if no reentry time is specified,  
45 before a time the integrated pest management plan coordinator determines to be appropriate

1 based on the time elapsed, area ventilation and whether the area is cleaned.

2 (2) The timing restrictions described in subsection (1) of this section do not apply if:

3 (a) The integrated pest management plan coordinator declares a pest emergency under  
4 subsection (3) of this section;

5 (b) The pesticide is applied outdoors by a pesticide applicator or public applicator as a  
6 component of academic instruction in agriculture; or

7 (c) The pesticide is applied by a public health official.

8 (3) An integrated pest management plan coordinator, after consultation with school fac-  
9 ulty and administration, may declare the existence of a pest emergency. If necessary, a  
10 pesticide other than a low-impact pesticide may be used to mitigate a declared pest emer-  
11 gency. If a pesticide is applied at a campus due to a pest emergency, the plan coordinator  
12 shall review the integrated pest management plan to determine whether modification of the  
13 plan might prevent future pest emergencies. The plan coordinator shall submit any recom-  
14 mendations for modification of the plan to the governing body. The governing body shall re-  
15 view and take formal action on the recommendations.

16 **SECTION 7.** (1) The governing body responsible for a school shall adopt policies and  
17 processes for ensuring that the integrated pest management plan coordinator for the school  
18 gives written notice of a proposed pesticide application at the campus to, at a minimum,  
19 parents and guardians of minor students, adult students, school administrators, faculty  
20 members and staff members.

21 (2) In adopting policies and processes under subsection (1) of this section, the governing  
22 body shall consider the age of the students attending the school and consider which methods  
23 for transmitting notice are most likely to reach the intended recipients.

24 (3) Except as provided in this subsection, the plan coordinator must give a pesticide ap-  
25 plication notice in a manner reasonably calculated to reach the intended recipient at least  
26 24 hours before the pesticide application occurs. A notice must identify the name, trademark  
27 or type of pesticide products, the registration number assigned to each of the pesticide pro-  
28 ducts, the expected area of application, the expected date of application and the reason for  
29 the application. If a pest emergency makes it impracticable to give a pesticide application  
30 notice at least 24 hours before the pesticide application occurs, the plan coordinator shall  
31 send the notice no later than 24 hours after the application occurs.

32 (4) Except as provided in this subsection, if a pesticide is applied at a campus, the plan  
33 coordinator or a designee of the coordinator shall place warning signs around pesticide ap-  
34 plication areas beginning no later than 24 hours before the application occurs and ending no  
35 earlier than 72 hours after the application occurs. A warning sign must bear the words  
36 "Warning: pesticide-treated area," identify the name, trademark or type of pesticide pro-  
37 ducts, identify the registration number assigned to each of the pesticide products, give the  
38 expected date for the application, give the reason for the application and provide the name  
39 and telephone number of a contact person. If a pest emergency makes it impracticable to  
40 place the warning signs at least 24 hours before the pesticide application, the plan coordina-  
41 tor or designee shall place the signs as soon as practicable but no later than at the time the  
42 application occurs.

43 (5) Subsections (1) to (4) of this section do not apply to a pesticide application described  
44 in section 6 (2)(b) of this 2009 Act.

45 (6) Failure to give notice or post warnings as required by this section does not create a

1 special cause of action for damages.

2 **SECTION 8.** (1) If a pesticide is applied at a campus, the integrated pest management  
3 plan coordinator or a designee of the coordinator shall place the labeling information and  
4 material data safety sheet for the pesticide on file at a school on the campus. The plan co-  
5 ordinator or designee shall record and make available the following information:

6 (a) The brand name or trademark of the pesticide product;

7 (b) The registration number assigned to the pesticide product;

8 (c) The pest condition that prompted the application;

9 (d) A description of the area on campus where the application occurred;

10 (e) The approximate amount and concentration of pesticide product applied;

11 (f) The type of application and whether the application proved effective;

12 (g) The public applicator license numbers and public trainee certificate numbers of the  
13 persons applying the pesticide;

14 (h) The names of the persons applying the pesticide;

15 (i) The dates on which the plan coordinator gave any notices required by section 7 of this  
16 2009 Act; and

17 (j) The dates and times for the placement and removal of warning signs under section 7  
18 of this 2009 Act.

19 (2) Pesticide application records must include copies of all notices given under section 7  
20 of this 2009 Act.

21 (3) A school shall retain pesticide application records required by this section for at least  
22 four years following the application date.

23 **SECTION 9.** (1) Except as provided in subsection (2) of this section, the State Department  
24 of Agriculture shall administer and enforce sections 2 to 9 of this 2009 Act. The department  
25 may make all rules the department considers reasonable for the administration and  
26 enforcement of sections 2 to 9 of this 2009 Act, including but not limited to rules to ensure  
27 the implementation, administration, adequacy, maintenance, improvement and enforcement  
28 of integrated pest management plans for schools.

29 (2) A governing body is not required to modify or replace an integrated pest management  
30 plan adopted before the effective date of this 2009 Act if the plan provides greater protection  
31 against pesticide exposure than is required by sections 2 to 9 of this 2009 Act or department  
32 rules.

33 (3) If a pesticide product or active ingredient does not have the signal words "warning"  
34 or "danger" on the label, the department shall determine whether the pesticide product or  
35 active ingredient has properties that make the product or ingredient unsuitable for use as  
36 a low-impact pesticide under sections 2 to 9 of this 2009 Act. In making the determination,  
37 the department shall consult with parties knowledgeable in matters concerning the chemical  
38 properties and health effects of pesticides. The consultation shall include, but need not be  
39 limited to, an inquiry into whether the pesticide product, any active or other ingredient of  
40 the product or any product degradate or metabolite of toxicological concern is known to be:

41 (a) A carcinogen;

42 (b) A mutagen;

43 (c) A reproductive toxin; or

44 (d) An endocrine disruptor.

45 (4) The department shall adopt by rule and make available to the public a list of pesticide

1 **products and active ingredients that the department determines under subsection (3) of this**  
2 **section to be unsuitable for use as low-impact pesticides under sections 2 to 9 of this 2009**  
3 **Act. Before adopting the list or an amendment to the list, the department shall submit the**  
4 **proposed list or amendment to the Pesticide Analytical and Response Center and obtain ap-**  
5 **proval of the list or amendment by the center.**

6 **SECTION 10.** ORS 634.116 is amended to read:

7 634.116. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee  
8 to engage in one or more of the classes of pest control or pesticide application business prescribed  
9 by the State Department of Agriculture under ORS 634.306 (2). The department may not issue a  
10 pesticide operator license to the United States, the State of Oregon or federal, state or local agen-  
11 cies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irri-  
12 gation, drainage or other districts or other federal, state or local governmental bodies.

13 (2) During a license period, and after a person has been issued a license to engage in certain  
14 classes of pest control or pesticide application business during a license period, the department upon  
15 receiving an additional application and applicable fees, may authorize the licensee to engage in ad-  
16 ditional classes of pest control or pesticide application business for the remainder of the license  
17 period as prescribed in ORS 634.306 (2).

18 (3)(a) The department shall establish a pesticide operator license fee not to exceed \$90 for the  
19 first class of pest control or pesticide application business as prescribed in ORS 634.306 (2) and not  
20 to exceed \$15 for each additional class.

21 (b) After a person makes first application for a specific license period, if later during the same  
22 license period the person desires to engage in additional classes of pest control or pesticide appli-  
23 cation businesses, such person shall pay the fee for each additional class established by the depart-  
24 ment not to exceed \$20.

25 (4) At least one owner or part owner of the pest control or pesticide application business shall  
26 also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole  
27 proprietorship or a partnership. At least one officer or employee shall obtain and maintain a pesti-  
28 cide applicator's license if the pesticide operator is a corporation. If a pesticide operator is found  
29 to be in violation of this subsection, the pesticide operator's license, notwithstanding ORS chapter  
30 183, is automatically suspended until the pesticide operator is in compliance. If the business is  
31 owned by one individual, the department shall make no charge for the pesticide applicator license  
32 issued to the individual under ORS 634.122.

33 (5) The department shall not issue or renew a pesticide operator's license until the applicant  
34 or licensee has furnished evidence to the department, in the form of a public liability policy issued  
35 by an insurance company qualified to do business in Oregon, protecting the applicant or licensee  
36 against liability for injury or death to persons and loss of or damage to property resulting from the  
37 application of pesticides, or in lieu of a policy, has furnished a deposit of cash, surety bond or other  
38 evidence of financial responsibility acceptable to the department that may be applied by the de-  
39 partment to the payment of damages resulting from operator liability. However:

40 (a) Except as required under paragraph (b) of this subsection, the financial responsibility re-  
41 quired by this section shall not apply to damages or injury to crops, real or personal property being  
42 worked upon by the applicant.

43 (b) If the applicant or licensee is to be engaged in the business of controlling or eradicating  
44 structural pests, or pests within a public or private place, or pests within private or public places  
45 where food is served, prepared or processed or where persons are regularly housed, the financial

1 responsibility required by this section shall apply to damages or injury to real or personal property  
2 being worked upon, as well as all the other real and personal property set forth in this section.

3 (6) The financial responsibility required by subsection (5) of this section must be not less than  
4 \$25,000 for bodily injury to one or more persons and not less than \$25,000 for property damage.

5 (7) Notwithstanding the provisions of ORS chapter 183, if the licensed pesticide operator fails  
6 to maintain the financial responsibility required by subsections (5) and (6) of this section, the license  
7 is automatically suspended until the department again verifies the pesticide operator is in compli-  
8 ance with subsections (5) and (6) of this section. The liability insurance company shall notify the  
9 department in writing at least 30 days prior to any cancellation of an insurance policy required by  
10 this section.

11 (8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the  
12 amount of damages for which a pesticide operator or pesticide applicator is liable as a result of use  
13 of pesticides, or financial responsibility for the same is limited to actual damages only.

14 (9) The department shall return the deposit required by subsection (5) of this section to the  
15 pesticide operator if the pesticide operator at any time establishes exemption from the financial re-  
16 sponsibility requirements under this chapter. After the expiration of two years from the date of an  
17 injury, death, loss or damage, the department shall return any deposit remaining to the pesticide  
18 operator or to the personal representative of the pesticide operator except that the department shall  
19 not make a return if the department has received notice that an action for damages arising out of  
20 the provisions of this section has been filed against the pesticide operator for whom the deposit was  
21 made, and the department has determined that the action is pending or that any judgment resulting  
22 from the action remains unpaid.

23 (10) If the pesticide operator is to spray by aircraft, then the department, in addition to other  
24 provisions of this section relating to financial responsibility, may by rule allow aircraft pesticide  
25 operators to reduce, suspend or terminate the liability insurance, applicable to spraying by aircraft,  
26 and required by subsections (5) and (6) of this section during certain periods of the year.

27 (11) The department may by rule allow liability insurance policies required by subsections (5)  
28 and (6) of this section to include deductible clauses of amounts to be determined by the department.

29 (12)(a) The United States, the State of Oregon or federal, state or local agencies, instrument-  
30 alities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or  
31 other districts or other federal, state or local governmental bodies are not required to obtain a li-  
32 cense as a pesticide operator or to furnish evidence of financial responsibility to the department  
33 when:

34 (A) Applying pesticides to property under their ownership, possession, control or jurisdiction;

35 (B) Applying pesticides pursuant to an order issued by the department for purposes of control-  
36 ling or eradicating noxious weeds or pests; or

37 (C) Applying pesticides to property under the ownership, possession, control or jurisdiction of  
38 another federal, state or local agency, instrumentality, political subdivision, county, city, town, mu-  
39 nicipal corporation, irrigation, drainage or other district or other federal, state or local govern-  
40 mental body or of a homeowners association as defined under ORS 94.550 if:

41 (i) The land is in a jurisdiction adjacent to property under their ownership, possession, control  
42 or jurisdiction;

43 (ii) The application is done in conjunction with, or as an extension of, an application of pesti-  
44 cides to property under their ownership, possession, control or jurisdiction; and

45 (iii) The pesticide application is done on a cost recovery, cooperative trade of services or no

1 cost basis, and not as a source for profit.

2 (b) A public utility or telecommunications utility is not required to obtain a license as a pesti-  
3 cide operator or to furnish evidence of financial responsibility to the department when applying  
4 pesticides to property under the ownership, possession or control of the utility.

5 (c) In addition to any application allowed under paragraph (a) of this subsection, a vector con-  
6 trol district is not required to obtain a license as a pesticide operator or to furnish evidence of fi-  
7 nancial responsibility to the department when applying pesticides for the prevention, control or  
8 eradication of a public health vector as defined in ORS 452.010 to property under the ownership,  
9 possession, control or jurisdiction of another federal, state or local agency, instrumentality, political  
10 subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other  
11 federal, state or local governmental body or of a homeowners association as defined under ORS  
12 94.550 if the pesticide application is done on a cost recovery, cooperative trade of services or no  
13 cost basis, and not as a source of profit.

14 (13) Subject to subsection (15) of this section, the employees of the agencies, instrumentalities,  
15 subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies or utili-  
16 ties described in subsection (12) of this section who perform or carry out the work, duties or re-  
17 sponsibilities of a pesticide applicator are subject to the provisions of this chapter, except they shall  
18 be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a  
19 pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify  
20 with the provisions of this chapter relating thereto.

21 (14) The public applicator license or public trainee certificate shall be:

22 (a) Issued by the department upon payment of the fee for the pesticide applicator license or  
23 pesticide trainee certificate.

24 (b) Valid and used by the licensee or certificate holder only when applying pesticides as de-  
25 scribed in subsection (12) of this section.

26 (c) Renewed, suspended or revoked each year in the same manner, under the same provisions  
27 and at the same time as other pesticide applicator licenses and trainee certificates are renewed,  
28 suspended or revoked.

29 (15) The provisions of subsection (13) of this section apply only to:

30 (a) The application of restricted-use pesticides; [or]

31 (b) The application of any pesticide by using a machine-powered device[.]; or

32 (c) **The application of a low-impact pesticide at the campus of a school, as defined in**  
33 **section 2 of this 2009 Act.**

34 (16) Prior to applying pesticides to land described in subsection (12)(a)(C) of this section, a  
35 public applicator shall inform the person requesting pesticide application of the possible availability  
36 of alternative sources of assistance, including sources in the private sector that are registered with  
37 the department or with industry trade or professional organizations.

38 (17) A federal, state or local agency, instrumentality, political subdivision, county, city, town,  
39 municipal corporation, irrigation, drainage or other district or other federal, state or local govern-  
40 mental body may not solicit or advertise for pesticide application business in areas outside its ju-  
41 risdiction.

42 **SECTION 11. (1) Notwithstanding section 9 of this 2009 Act, the Oregon State University**  
43 **Extension Service, in cooperation with the State Department of Agriculture and the De-**  
44 **partment of Human Services, shall develop one or more model integrated pest management**  
45 **plans for use in schools subject to sections 2 to 9 of this 2009 Act. The extension service shall**



1 **make the model plans available to school governing bodies no later than July 1, 2011.**

2 **(2) Except as provided in subsection (3) of this section, a governing body required under**  
3 **section 3 of this 2009 Act to adopt one or more integrated pest management plans shall im-**  
4 **plement the plans on or before July 1, 2012.**

5 **(3) The deadline established in subsection (2) of this section does not apply to a school**  
6 **established after the effective date of this 2009 Act. The governing body of a new school shall**  
7 **notify the State Department of Agriculture when the school is established. The department**  
8 **shall specify a deadline for the governing body to adopt and implement an integrated pest**  
9 **management plan for the school. However, the deadline specified by the department may not**  
10 **be earlier than the date described in subsection (2) of this section.**

11 **(4) The State Department of Agriculture shall adopt an initial list of unsuitable pesticides**  
12 **under section 9 (4) of this 2009 Act no later than January 1, 2012.**

13 **SECTION 12. Section 11 of this 2009 Act is repealed January 2, 2014.**

14 **SECTION 13. The amendments to ORS 634.116 by section 10 of this 2009 Act become op-**  
15 **erative on July 1, 2012.**

16