

## SENATE AMENDMENTS TO SENATE BILL 637

By COMMITTEE ON EDUCATION AND GENERAL GOVERNMENT

May 11

1 On page 1 of the printed bill, delete lines 4 through 30.

2 Delete pages 2 through 9 and insert:

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

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

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

9 **“(2) ‘Governing body’ means a board of directors, agency or other body or person having**  
10 **policymaking and general oversight responsibility for a community college district, education**  
11 **service district, school district, other unit of education governance, private school or other**  
12 **educational entity.**

13 **“(3) ‘Integrated pest management plan’ means a proactive strategy that:**

14 **“(a) Focuses on the long-term prevention or suppression of pest problems through eco-**  
15 **nomically sound measures that:**

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

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

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

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

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

24 **“(c) Incorporates the use of sanitation, structural remediation or habitat manipulation**  
25 **or of mechanical, biological and chemical pest control measures that present a reduced risk**  
26 **or have a low impact and, for the purpose of mitigating a declared pest emergency, the ap-**  
27 **plication of pesticides that are not low-impact pesticides;**

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

30 **“(e) Evaluates the need for pest control by identifying acceptable pest population density**  
31 **levels;**

32 **“(f) Monitors and evaluates the effectiveness of pest control measures;**

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

35 **“(h) Excludes the application of pesticides for purely aesthetic purposes;**

1       “(i) Includes school staff education about sanitation, monitoring and inspection and about  
2 pest control measures;

3       “(j) Gives preference to the use of nonchemical pest control measures;

4       “(k) Allows the use of low-impact pesticides if nonchemical pest control measures are  
5 ineffective; and

6       “(L) Allows the application of a pesticide that is not a low-impact pesticide only to miti-  
7 gate a declared pest emergency or if the application is by, or at the direction or order of, a  
8 public health official.

9       “(4) ‘Low-impact pesticide’ means a product that does not contain a pesticide product or  
10 active ingredient described in section 3 (5) of this 2009 Act.

11       “(5) ‘Pest’ means:

12       “(a) An insect or other arthropod;

13       “(b) A weed, moss, slime or mildew or a plant disease caused by a fungus, bacterium or  
14 virus;

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

16       “(d) A bacteria, spore, virus, fungus or other microorganism that is harmful to human  
17 health; or

18       “(e) Other forms of plant or animal life that may infest or be detrimental to vegetation,  
19 humans, animals, structures, managed landscapes or other human environments.

20       “(6) ‘Pest emergency’ means an urgent need to eliminate or mitigate a pest situation that  
21 threatens:

22       “(a) The health or safety of students, staff, faculty members or members of the public  
23 using the campus; or

24       “(b) The structural integrity of campus facilities.

25       “(7) ‘Registration number’ means the pesticide registration number assigned by the  
26 United States Environmental Protection Agency.

27       “(8) ‘School’ means:

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

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

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

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

33       “(e) The Oregon School for the Blind;

34       “(f) The Oregon School for the Deaf; and

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

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

39       “(a) Designating an integrated pest management plan coordinator;

40       “(b) Identifying plan coordinator responsibilities;

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

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

43       “(e) Providing a process for responding to inquiries and complaints about noncompliance  
44 with the integrated pest management plan; and

45       “(f) Conducting outreach to the school community about the school’s integrated pest

1 management plan.

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

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

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

15 “(5) A governing body shall adopt a list of low-impact pesticides for use with the inte-  
16 grated pest management plan. The governing body may include any product on the list except  
17 products that:

18 “(a) Contain a pesticide product or active ingredient that has the signal words ‘warning’  
19 or ‘danger’ on the label;

20 “(b) Contain a pesticide product classified as a human carcinogen or probable human  
21 carcinogen under the United States Environmental Protection Agency 1986 Guidelines for  
22 Carcinogen Risk Assessment; or

23 “(c) Contain a pesticide product classified as carcinogenic to humans or likely to be  
24 carcinogenic to humans under the United States Environmental Protection Agency 2003  
25 Draft Final Guidelines for Carcinogen Risk Assessment.

26 “SECTION 4. (1) The governing body shall provide for the designation of one or more  
27 persons as integrated pest management plan coordinators for the governed schools. A plan  
28 coordinator must be an employee of the governed district, unit, school or entity, unless the  
29 governing body delegates pest management duties to an independent contractor. Each school  
30 shall have the services of at least one integrated pest management plan coordinator. A plan  
31 coordinator may serve more than one school. The responsibilities of the plan coordinator  
32 shall include, but need not be limited to:

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

34 “(b) Overseeing pest prevention efforts;

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

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

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

39 “(f) Evaluating pest management results; and

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

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

44 “SECTION 5. If a school has followed the integrated pest management plan and non-  
45 chemical pest control measures were ineffective, subject to section 6 of this 2009 Act the

1 integrated pest management plan coordinator may authorize the application of a low-impact  
2 pesticide. The low-impact pesticide application must be made by a pesticide applicator or by  
3 a public applicator. The use of a pesticide applicator or public applicator to make an appli-  
4 cation does not cancel, alter or reassign any of the duties imposed under section 7 or 8 of  
5 this 2009 Act.

6 **“SECTION 6.** (1) Subject to subsection (2) of this section:

7 **“(a)** If the labeling of a pesticide product specifies a reentry time, a pesticide may not  
8 be applied to an area of a campus where the school expects students to be present before  
9 expiration of that reentry time.

10 **“(b)** If the labeling of a pesticide product does not specify a reentry time, a pesticide may  
11 not be applied to an area of a campus where the school expects students to be present before  
12 expiration of a reentry time that the integrated pest management plan coordinator deter-  
13 mines to be appropriate based on the times at which students would normally be expected  
14 to be in the area, area ventilation and whether the area will be cleaned before students are  
15 present.

16 **“(2)(a)** The application restrictions described in subsection (1) of this section do not apply  
17 if the pesticide is applied outdoors by a pesticide applicator or public applicator as a compo-  
18 nent of academic instruction in agriculture.

19 **“(b)** The application restrictions described in subsection (1)(b) of this section do not apply  
20 if the integrated pest management plan coordinator declares a pest emergency under sub-  
21 section (3) of this section.

22 **“(3)** An integrated pest management plan coordinator, after consultation with school  
23 faculty and administration, may declare the existence of a pest emergency. If necessary, a  
24 pesticide other than a low-impact pesticide may be used to mitigate a declared pest emer-  
25 gency. If a pesticide is applied at a campus due to a pest emergency, the plan coordinator  
26 shall review the integrated pest management plan to determine whether modification of the  
27 plan might prevent future pest emergencies. The plan coordinator shall submit any recom-  
28 mendations for modification of the plan to the governing body. The governing body shall re-  
29 view and take formal action on the recommendations.

30 **“SECTION 7.** (1) The governing body responsible for a school shall adopt policies and  
31 processes for ensuring that the integrated pest management plan coordinator for the school,  
32 or a designee of the coordinator, gives written notice of a proposed pesticide application at  
33 the campus to, at a minimum, parents and guardians of minor students, adult students,  
34 school administrators, faculty members and staff members. The plan coordinator or designee  
35 may give a written notice described in this subsection by any reasonable means, including  
36 but not limited to, electronic mail.

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

40 **“(3)** Except as provided in this subsection, the plan coordinator or designee must give a  
41 pesticide application notice in a manner reasonably calculated to reach the intended recipient  
42 at least 24 hours before the pesticide application occurs. A notice must identify the name,  
43 trademark or type of pesticide products, the registration number assigned to each of the  
44 pesticide products, the expected area of application, the expected date of application and the  
45 reason for the application. If a pest emergency makes it impracticable to give a pesticide

1 application notice at least 24 hours before the pesticide application occurs, the plan coordi-  
2 nator or designee shall send the notice no later than 24 hours after the application occurs.

3 “(4) Except as provided in this subsection, if a pesticide is applied at a campus, the plan  
4 coordinator or a designee of the coordinator shall place warning signs around pesticide ap-  
5 plication areas beginning no later than 24 hours before the application occurs and ending no  
6 earlier than 72 hours after the application occurs. A warning sign must bear the words  
7 ‘Warning: pesticide-treated area,’ give the expected or actual date and time for the appli-  
8 cation and provide the telephone number of a contact person. If a pest emergency makes it  
9 impracticable to place the warning signs at least 24 hours before the pesticide application,  
10 the plan coordinator or designee shall place the signs as soon as practicable but no later than  
11 at the time the application occurs.

12 “(5) Failure to give notice or post warnings as required by this section does not create  
13 a cause of action for damages and may not be asserted as the basis for a per se negligence  
14 claim.

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

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

20 “(b) The United States Environmental Protection Agency registration number assigned  
21 to the pesticide product;

22 “(c) The pest condition that prompted the application;

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

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

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

26 “(g) The pesticide applicator or public applicator license numbers and pesticide trainee  
27 or public trainee certificate numbers of the persons applying the pesticide;

28 “(h) The names of the persons applying the pesticide;

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

31 “(j) The dates and times for the placement and removal of warning signs under section  
32 7 of this 2009 Act.

33 “(2) Pesticide application records must include copies of all notices given under section  
34 7 of this 2009 Act.

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

37 “SECTION 9. A governing body may adopt, improve or continue any integrated pest  
38 management plan that provides protection against pesticide exposure equal to or greater  
39 than the protection against pesticide exposure required by sections 2 to 9 of this 2009 Act.

40 “SECTION 10. ORS 634.116 is amended to read:

41 “634.116. (1) A pesticide operator’s license, or supplements thereto, shall authorize the licensee  
42 to engage in one or more of the classes of pest control or pesticide application business prescribed  
43 by the State Department of Agriculture under ORS 634.306 (2). The department may not issue a  
44 pesticide operator license to the United States, the State of Oregon or federal, state or local agen-  
45 cies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irri-

1 gation, drainage or other districts or other federal, state or local governmental bodies.

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

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

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

14 “(4) At least one owner or part owner of the pest control or pesticide application business shall  
15 also obtain and maintain a pesticide applicator’s license if the pesticide operator is a sole  
16 proprietorship or a partnership. At least one officer or employee shall obtain and maintain a pesti-  
17 cide applicator’s license if the pesticide operator is a corporation. If a pesticide operator is found  
18 to be in violation of this subsection, the pesticide operator’s license, notwithstanding ORS chapter  
19 183, is automatically suspended until the pesticide operator is in compliance. If the business is  
20 owned by one individual, the department shall make no charge for the pesticide applicator license  
21 issued to the individual under ORS 634.122.

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

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

32 “(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating  
33 structural pests, or pests within a public or private place, or pests within private or public places  
34 where food is served, prepared or processed or where persons are regularly housed, the financial  
35 responsibility required by this section shall apply to damages or injury to real or personal property  
36 being worked upon, as well as all the other real and personal property set forth in this section.

37 “(6) The financial responsibility required by subsection (5) of this section must be not less than  
38 \$25,000 for bodily injury to one or more persons and not less than \$25,000 for property damage.

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

45 “(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary,

1 the amount of damages for which a pesticide operator or pesticide applicator is liable as a result  
2 of use of pesticides, or financial responsibility for the same is limited to actual damages only.

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

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

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

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

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

24 “(B) Applying pesticides pursuant to an order issued by the department for purposes of con-  
25 trolling or eradicating noxious weeds or pests; or

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

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

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

34 “(iii) The pesticide application is done on a cost recovery, cooperative trade of services or no  
35 cost basis, and not as a source for profit.

36 “(b) A public utility or telecommunications utility is not required to obtain a license as a pes-  
37 ticide operator or to furnish evidence of financial responsibility to the department when applying  
38 pesticides to property under the ownership, possession or control of the utility.

39 “(c) In addition to any application allowed under paragraph (a) of this subsection, a vector  
40 control district is not required to obtain a license as a pesticide operator or to furnish evidence of  
41 financial responsibility to the department when applying pesticides for the prevention, control or  
42 eradication of a public health vector as defined in ORS 452.010 to property under the ownership,  
43 possession, control or jurisdiction of another federal, state or local agency, instrumentality, political  
44 subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other  
45 federal, state or local governmental body or of a homeowners association as defined under ORS

1 94.550 if the pesticide application is done on a cost recovery, cooperative trade of services or no  
2 cost basis, and not as a source of profit.

3 “(13) Subject to subsection (15) of this section, the employees of the agencies, instrumentalities,  
4 subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies or utili-  
5 ties described in subsection (12) of this section who perform or carry out the work, duties or re-  
6 sponsibilities of a pesticide applicator are subject to the provisions of this chapter, except they shall  
7 be issued ‘public applicator’ licenses or, if they carry out the work, duties or responsibilities of a  
8 pesticide trainee, shall be issued ‘public trainee’ certificates, if they otherwise comply or qualify  
9 with the provisions of this chapter relating thereto.

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

11 “(a) Issued by the department upon payment of the fee for the pesticide applicator license or  
12 pesticide trainee certificate.

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

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

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

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

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

21 “(c) **The application of any pesticide at the campus of a school, as defined in section 2**  
22 **of this 2009 Act, by an employee of the school.**

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

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

31 “**SECTION 11. (1) Notwithstanding section 9 of this 2009 Act, the Oregon State University**  
32 **Extension Service, in cooperation with the Department of Human Services, shall develop one**  
33 **or more model integrated pest management plans for use in schools subject to sections 2 to**  
34 **9 of this 2009 Act. The extension service shall make the model plans available to school**  
35 **governing bodies no later than July 1, 2011. However, a school governing body may adopt any**  
36 **integrated pest management plan that complies with the requirements of sections 2 to 9 of**  
37 **this 2009 Act.**

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

41 “(3) **The deadline established in subsection (2) of this section does not apply to a school**  
42 **established after the effective date of this 2009 Act.**

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

44 “**SECTION 13. The amendments to ORS 634.116 by section 10 of this 2009 Act become**  
45 **operative on July 1, 2012.”**



