

Date of Hearing: May 3, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Chris Holden, Chair  
AB 1042 (Bauer-Kahan) – As Amended March 16, 2023

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

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

**SUMMARY:**

This bill requires the director of the Department of Pesticide Regulation (DPR) to adopt regulations to govern the use and disposal of seeds treated with a pesticide.

Specifically, this bill:

- 1) Requires the director of DPR to adopt regulations to govern the use and disposal of seeds treated with a pesticide, and requires the regulations to prohibit the use of such seeds that meet any of the existing statutory conditions for the cancelation of the registration of a pesticide.
- 2) Prohibits a person from selling, delivering, or using seeds treated with a pesticide that is not registered for that use.
- 3) Requires, on and after January 1, 2025, a use report to be submitted by, or on behalf of, a grower to the director of DPR or a county agricultural commissioner (CAC) when seeds treated with a pesticide are used by the grower in the state.
- 4) Requires, based on the aforementioned use reports, the director of DPR or a CAC, on and after January 1, 2026, to annually report to the public on the pounds of pesticides applied as seed treatment and the cumulative acres planted with seeds treated with a pesticide in California, separated by crop type, active ingredient, and county of application.
- 5) Requires the director of DPR to endeavor to eliminate from use in the state any seed treated with a pesticide that endangers the agricultural or nonagricultural environment, is not beneficial for the purposes for which it is sold, or is misrepresented. Requires the director, in carrying out this responsibility, to develop an orderly program for the continuous evaluation of all seeds treated with a pesticide.
- 6) Requires the director of DPR to prohibit or regulate the use of environmentally harmful materials, including seeds treated with a pesticide.

**FISCAL EFFECT:**

DPR anticipates costs of an unknown but potentially significant amount, likely in the hundreds of thousands of dollars, to adopt and implement regulations governing the use and disposal of pesticide-treated seeds (DPR Fund).

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

One would think that the Department of Pesticide Regulation would regulate all pesticide uses – that is not true. DPR does not protect Californians from the pesticides used to treat seeds. As a result, a huge volume of pesticide use in California may be completely unknown. AB 1042 takes the long-overdue step of resolving this loophole by ensuring [DPR] regulates pesticide-treated seeds, consistent with its mandate.

2) **Background.** According to DPR, pesticide-treated seeds are exempted from review by the U.S. Environmental Protection Agency (U.S. EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as "treated articles". To the extent that a seed is treated with a pesticide to protect the seed, the seed does not fall under the state definition of "pesticide" and is excluded from review by DPR and exempt from pesticide use reporting. Seed treatment products must be registered by U.S. EPA and DPR when the coating process is conducted in California. However, there is limited information on which commodities utilize treated seeds, which active ingredients are used for each commodity, and the extent to which treated seeds are used in California. California Department of Food and Agriculture (CDFA) seed inspection data from 2010 to 2021 show that many seed treatment products found on seeds in California are not registered for use in the state, meaning that pesticides not allowed for use in California are entering the state and planted via treated seeds.

In 2021, DPR held a virtual public workshop on pesticide-treated seeds to articulate the current regulatory framework surrounding pesticide-treated seeds, characterize potential for off-site movement of seed coatings, and gather additional information on current use and potential impacts of pesticide-treated seeds. This bill sets up a regulatory program at DPR to both gather information on and regulate the use of pesticide-treated seeds using a similar structure under which DPR regulates other methods of pesticide use. According to DPR, following the workshop, DPR received nearly 8,000 public comments from a variety of stakeholders. Most of the comments focused on the potential for environmental impacts associated with pesticide-treated seeds and cited a growing body of research focused on the use of pesticide-treated seeds and subsequent impacts to non-target organisms and ecosystems, including water quality, harms to birds and mammals from the consumption of seeds, and generation of dust.

***Pesticide Mill Assessment.*** California assesses a "mill assessment" fee on sales of DPR-registered pesticides. A mill is equal to one-tenth of a cent. The maximum assessment rate is set in statute, and the director of DPR sets the actual rate by regulation. The assessment rate is currently set at 21 mills, or 2.1 cents on each dollar of sales, the statutory maximum. There is also an additional 0.75 mill assessment per dollar of sales on agricultural use pesticides. The mill assessment is collected by DPR and deposited in the DPR Fund to pay for the state's pesticide regulatory program. DPR's programs are funded mainly from fees on pesticide registrations, professional licenses, and from the mill assessment. The additional assessment on the sale of agricultural use pesticides goes entirely to CDFA. An amount equal to the revenue derived from 7.6 mills per dollar of sales is allocated to the CACs as reimbursement for costs incurred by CACs in the local enforcement of pesticide laws and

regulations. In California, local pesticide enforcement is carried out, in large part, by the CACs in nearly all 58 counties. The CACs have joint authority with DPR in the enforcement of pesticide laws and regulations.

While not a direct cost, this bill could result in increased costs of an unknown amount to CACs for local enforcement of revised pesticide laws and regulations resulting from this bill and any subsequent regulation of pesticide-treated seeds. As noted, CAC costs are partially reimbursed by DPR via the mill assessment but the amount is set in statute and regulations and is currently at its statutory maximum. CACs also receive an Unclaimed Gas Tax subvention each year from the California Department of Food and Agriculture. Outside of these funding sources, CACs generally rely on their county general funds for support.

Assuming this bill and the subsequent regulations result in the registration of new pesticides in the state, this bill could result in increased revenues to the DPR Fund of an unknown amount from the mill assessment.

3) **Support and Opposition.** Writing in support, a coalition of organizations states:

Coated seeds are incredibly damaging to the environment...There is enough active ingredient on a single seed to kill 80,000 bees. As much as 95% of the coating dusts or sloughs off, killing local wildlife, persisting in soil for up to three years, and infecting ground and surface water...AB 1042 is not a chemical ban; it simply clarifies CDPR's authority to regulate pesticide-coated seeds within currently prescribed California state law.

Writing in opposition, a coalition of agricultural organizations states:

The measure would require unnecessary and burdensome regulations of treated seeds, resulting in fewer pest and disease prevention options available to California farmers. This additional regulatory review will add significant expense to the California Department of Pesticide Regulation (CDPR) and County Agricultural Commissioners, whose budgets are already fiscally challenged.

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