

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 386

(Senator Nathan-Pulliam, *et al.*)

Education, Health, and Environmental Affairs

Environment and Transportation

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**Pollinator Habitat Plans - Plan Contents - Requirements and Prohibition**

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This bill requires that pollinator habitat plans established by the Department of Natural Resources (DNR), the Maryland Environmental Service (MES), and the State Highway Administration (SHA) “be as protective of pollinators as” the Maryland Department of Agriculture’s (MDA) managed pollinator protection plan (rather than “adhere to” MDA’s plan). The required contents of the plans are also modified to focus on pollinator *habitat areas*, rather than pollinator *habitats*. Instead of the requirement to include best management practices for the maintenance, creation, enhancement, and restoration of pollinator habitats, the bill specifies that pollinator habitat plans must include best management practices for the *designation*, maintenance, creation, enhancement, and restoration of pollinator *habitat areas*. The bill also restricts the use of neonicotinoid pesticides, pesticides labeled as toxic to bees or other pollinators, and seeds or plants treated with a neonicotinoid pesticide, in an area designated or created as a pollinator habitat area in accordance with a pollinator habitat plan.

The bill takes effect July 1, 2017.

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**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances, as discussed below.

**Local Effect:** None.

**Small Business Effect:** Minimal, as discussed below.

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## Analysis

**Bill Summary:** The bill prohibits a pollinator habitat plan from allowing the use of neonicotinoid pesticides, pesticides labeled as toxic to bees or other pollinators, or seeds or plants treated with a neonicotinoid pesticide in an area designated or created as a pollinator habitat area, subject to the following specified exceptions:

- Pesticides labeled as toxic to bees or other pollinators that are not neonicotinoid pesticides may be used in an area designated or created as a pollinator habitat area under a pollinator habitat plan if the Secretary of Health and Mental Hygiene determines that the use is necessary to respond to a specific instance of threat to public health.
- A pollinator habitat plan may not restrict a farmer, or a person working under the supervision of a farmer, from using neonicotinoid pesticides, pesticides labeled as toxic to bees or other pollinators, or seeds or plants treated with a neonicotinoid pesticide for agricultural purposes.

**Current Law:** Chapter 614 of 2016 requires DNR, MES, and SHA to each establish, in consultation with MDA, a pollinator habitat plan by July 1, 2017. Each agency must (1) make the agency's pollinator habitat plan available to the public on its website by September 1, 2017; (2) report to the Senate Education, Health, and Environmental Affairs Committee and House Environment and Transportation Committee on the plan by January 1, 2018; and (3) implement the plan by July 1, 2018.

A pollinator habitat plan:

- must include best management practices for the maintenance, creation, enhancement, and restoration of pollinator *habitats*;
- must *adhere to* MDA's managed pollinator protection plan;
- may not require an action on land that is inconsistent with any federal, State, or local law, regulation, rule, or guidance that applies to the land; and
- may not require the creation of pollinator habitat on productive farmland.

**Background:** MDA released its managed pollinator protection plan, *The Maryland Pollinator Protection Plan*, in 2016. The plan resulted from the U.S. Environmental Protection Agency, at the direction of the President, engaging State and tribal environmental, agricultural, and wildlife agencies in the development of State and tribal pollinator protection plans. MDA's plan indicates that pollinator health is declining across the country, putting the nation's food supply – about one-third of which depends upon pollinators – at risk.

Neonicotinoid pesticides are a class of commonly used insecticides which affect the central nervous system of insects. Concern has been raised about their impact on nontarget organisms, including bees and other pollinators, and the environment. Chapters 661 and 662 of 2016 establish certain restrictions, effective January 1, 2018, on the sale and use of neonicotinoid pesticides, allowing for retail sales only from certain, registered dealers and use only by certified pesticide applicators and farmers, or persons working under the supervision of a certified applicator or farmer, and veterinarians.

**State Fiscal Effect:** DNR and SHA have raised concerns about the operational and/or fiscal impact of the bill's restrictions on the use of neonicotinoid pesticides, pesticides labeled as toxic to bees or other pollinators, and/or seeds or plants treated with a neonicotinoid pesticide, in an area designated or created as a pollinator habitat area in accordance with the agencies' pollinator habitat plans. DNR indicates that the restriction on the use of neonicotinoid pesticides limits the department's ability to treat forest land for insect pests that threaten forest health, such as the hemlock woolly adelgid, which affects eastern hemlock trees on department lands in Western Maryland. SHA indicates that the bill increases its costs for vegetation planting due to increased costs to use seeds or plants not treated with neonicotinoid pesticides. (The Department of Legislative Services (DLS) advises that it is unclear to what extent seeds and plants not treated with neonicotinoids may be more expensive than other seeds or plants.)

DLS notes, however, that the bill appears to provide the agencies with discretion to determine the location and extent of land on which pollinator habitat areas are designated or created (and that is subject to the pesticide-related restrictions), allowing the agencies to limit the extent of those areas in order to mitigate any material operational or fiscal impacts.

**Small Business Effect:** The fiscal and policy note for House Bill 132 of 2016 (enacted as Chapter 614, which established the requirement that DNR, MES, and SHA develop and implement pollinator habitat plans) indicated that the bill could benefit small businesses providing services to the affected State agencies in developing and/or implementing the pollinator habitat plans, as well as beekeepers in proximity of improved pollinator habitat on State lands. It is not clear that this bill significantly changes the overall impact on small businesses of the development and implementation of pollinator habitat plans by DNR, MES, and SHA, in part due to uncertainty of how significantly the agencies' development and implementation of pollinator habitat plans under the bill differs from the agencies' development and implementation of the plans in the absence of the bill.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 830 (Delegate Healey) – Environment and Transportation.

**Information Source(s):** Maryland Environmental Service; Maryland Department of Agriculture; Department of Natural Resources; Maryland Department of Transportation; Department of Health and Mental Hygiene; Department of Legislative Services

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