

Pesticide Preemption Turns Exemption

Bill Would Exempt Commercial Applicators From Ordinances

On Wednesday the State and Local Government Committee held a public hearing on a bill seeking to effectively nullify the clear and long-standing home rule authority to locally regulate pesticides. If this sounds familiar, it is. Last year’s now-extinguished bill LD 1505, *An Act To Create Consistency in the Regulation of Pesticides*, has been replaced with another late session bill that would achieve the same aim.

This year’s version, LD 1853, *An Act To Ensure the Safe and Consistent Regulation of Pesticides throughout the State by Providing Exemptions to Municipal Ordinances That Regulate Pesticides*, would preempt municipal regulation by providing that ordinances which regulate the use of pesticides do not apply to commercial applicators and spray contracting firms, nor to private applicators that are producing agricultural or horticultural commodities. The bill, described in the March 9 edition of the *Legislative Bulletin*, was introduced by Governor LePage and sponsored on his behalf by Sen. Tom Saviello of Franklin County.

Thirty municipalities across the state, from Allagash to Wells, have adopted pesticide-related ordinances over the past forty years. Nearly 400 people submitted testimony in writing to the committee prior to the hearing, with the majority in opposition to the bill. At Wednesday’s hearing, nine testified in support of LD 1853 and 14 against.

Support. Describing his years of experience on the state Pesticides Control Board prior to serving in the Legislature, Sen. Saviello expressed his view that state-level regulation of pesticide ap-

plication is more appropriate than local regulation. He took issue with the availability of a variety of toxic products over the shelf that kill rodents or repel insects, and believes their application should also be subject to licensing, as should the application of pesticides by organic farmers. Recognizing the substantial amount of written opposition testimony, Sen. Saviello warned, “You may in fact kill this bill, but it will be back.”

A representative of Ocean Properties LLC, the company that owns the Samoset resort in Rockport, touted the accolades of that resort’s golf course, raising concern that the course could be in jeopardy if the town were to ban pesticides. However, Rockport has not adopted a pesticide-related ordinance and its neighbor, the City of Rockland, adopted an ordinance which only applies to city-owned land and provides for a waiver in necessary circumstances.

An orchard owner from Mt. Vernon supported the bill while taking issue with

the number of exemptions in the ordinance adopted by the City of Portland in January. In response to a concern raised that his town could potentially regulate his orchard out of business, committee member Rep. John Madigan of Rumford explained that ordinances cannot be adopted without public notice and comment. If anything, Rep. Madigan viewed Portland’s ordinance as demonstrating that existing municipal ordinances have been crafted in a careful and responsible manner, rather than with a broad brush.

The National Association of Landscape Professionals explained the landscaper profession’s need for uniform regulations, claiming hundreds of good jobs could be at stake. Lawn care company TruGreen’s Portland branch also argued ordinances will put people out of business and result in job losses, claiming political agendas, intimidation, fear, and hype are driving what it described as ill-advised ordinances.

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Immigration Enforcement Mandate Update

Judiciary Committee Splits Along Party Lines

The public hearing on LD 1833, *An Act To Facilitate Compliance with Federal Immigration Law by State and Local Government Entities*, was described in last week’s *Legislative Bulletin*. The bill would mandate that all law enforcement officers in Maine enforce federal immigration law “to the full extent permitted by law,” or

face penalties on the order of \$500 per day.

On Tuesday, the Judiciary Committee made extremely quick work of this proposal. With no debate, seven of the members present voted “ought not to pass” while the remaining four members voted “ought to pass” on the bill as printed. The vote was along party lines.

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Neither organization testified that any jobs have been lost to date.

The Maine Vegetable and Small Fruit Growers Association, a farmer from Cape Elizabeth, and a farmer from Freeport also expressed concerns with local ordinances and a preference for state regulation, even though neither of those two towns have pesticide-related ordinances on their books. The farmer from Freeport went so far as to claim that failing to pass LD 1853 would “destroy” all of Maine’s farmers.

Backing them up, the Maine Farm Bureau stated: “Conventional farmers should not be required to adhere to a costly and ineffective pesticide philosophy because of a local municipal ordinance.” Calling the bill a compromise, the bureau stated agricultural producers and commercial pesticide applicators should be free to use any products approved by the federal and state governments. When the bureau claimed misinformation and hyperbole drove the adoption of existing ordinances, committee member Rep. John Spear of Thomaston in turn called its testimony hyperbole given the limited number and nature of existing ordinances.

Opposition. After the Farm Bureau, opponents of LD 1853 were allowed to offer their rebuttal. A resident of the Town of Arrowsic pointed out that Maine’s so-called Right to Farm Act exempts farmers from local ordinances. Moreover, his town’s ordinance only prevents applying herbicides to foliage. The resident, who served as the Public Information Officer for the Board of

Pesticides Control from 2005-2015, recognized that towns need to act when the state refuses to assist them. In his view, the board has transitioned from one that for years was balanced and capable of compromise to a tilted imbalance that now results in actions on behalf of the regulated community rather than the general public, refusing to allow its staff to work with towns that seek guidance.

The Chair of Harpswell’s Conservation Commission corroborated this account, noting the board worked with the town when it adopted its ordinance in 2004, but would not in 2016 when the town added an amendment to its ordinance. Contrasting the unsupported claim by applicators that their jobs are on the line, she detailed the vital importance of her town’s 216 miles of coastal shoreline to its economy. In order to protect its fisheries, with landings valued at \$26.8 million in 2017, the town exercised its home rule in a manner so responsible and necessary that the state wound up adopting similar regulations four years later. Without the authority to enforce its ordinance, the chair claimed the town’s marine environment, and the jobs that depend on it, would be at serious risk of degradation.

In written testimony, the City of South Portland explained its 14-month process that led to the adoption of its ordinance, which combined serious staff research with input from a variety of practitioners and land care professionals. The city took on proponents’ claims that state and federal agencies are better equipped to assess pesticides, pointing to extensive research on adverse impacts of pesticide use on human and aquatic health while noting uncertainties in existing regulations resulting from “incomplete testing of active ingredients and full formulations, lack of data on potential health and environmental outcomes, and no assessments on the interactions of chemical mixtures and associated synergistic effects.”

Two members of the Town of Porter Planning Board opposed LD 1853, one in person and one in writing. Porter is the most recent municipality to adopt an ordinance, having just this past

Saturday voted to prohibit spraying on publicly maintained right of ways by the state and utilities. The vote was the result of spraying of herbicides in 2016 within 75 feet of water bodies, wetlands, farmers’ hayfields, and within 25 feet of cattle grazing in the fields. Prior to spraying, the utility did not notify impacted abutters, the town, or follow state-established spraying publication protocols. Although Porter’s residents understood they would bear some burden of the cost of reverting back to manual treatment, the townspeople were willing to accept additional costs in order to protect their waters and farms from further exposure.

Joining in opposition were three legislators, the Mayors’ Coalition on Jobs and Economic Development, the Maine Organic Farmers and Gardeners Association (MOFGA), and a variety of environmental protection organizations including Friends of Casco Bay, Maine Audubon, Maine Conservation Voters, and the Natural Resources Council of Maine (NRCM). The Mayors’ Coalition showed how LD 1853 is not altogether different from last year’s LD 1505, swapping an outright preemption for an exemption on the largest users of pesticides.

Rep. Stanley Zeigler of Montville spoke to his town’s ordinance, which has been in place without issue since 1980 and also prohibits spraying on right-of-ways in a manner similar to Porter’s ordinance. A constituent of Rep. Ziegler’s testified that Maine Board of Pesticides Control staff have approximated a 700 percent increase in pounds of pesticides distributed for use in and around homes and in public areas in Maine between the years 1995 and 2011. Although the Board has not analyzed data since that time, a sampling by the Board of stormwater at 20 sites in 2015 detected the presence of 22 pesticides. Friends of Casco Bay testified that over eight years its research identified 10 different pesticides not listed as safe for use in marine environments at 14 locations around the Bay.

NRCM referred to the huge increase

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Legislative Bulletin

A weekly publication of the Maine Municipal Association throughout sessions of the Maine State Legislature.

Subscriptions to the *Bulletin* are available at a rate of \$20 per calendar year. Inquiries regarding subscriptions or opinions expressed in this publication should be addressed to: *Legislative Bulletin*, Maine Municipal Association, 60 Community Drive, Augusta, ME 04330. Tel: 623-8428. Website: www.memun.org

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Pesticide-Related Ordinances Adopted In Maine

Pesticide-related ordinances are required to be filed with the state Board of Pesticides Control. Links to adopted ordinances are available on the board's website, as are the majority of the following ordinance summaries.

Town	Ordinance Summary
Allagash	Application of herbicides for forestry purposes prohibited.
Amherst	Permit required to apply within shoreland zone.
Arrowsic	Foliar application of herbicides banned for public works use.
Brighton Plantation	Application of pesticides to woodlands prohibited.
Brunswick	Prohibits use or storage of most pesticides other than for households and agriculture within the aquifer protection zone. Also prohibits aerial applications other than public health applications performed under the auspices of the Town or State. Exceptions may be approved by Codes Enforcement Officer.
Castine	Within the Aquifer Protection Overlay District, storage or manufacturing of pesticides prohibited and application of pesticides requires site plan approval. Permit required for non-residential pesticide/fertilizer application and Integrated Pest Management and Nutrient Management plans required, following Maine Board of Pesticides Control (BPC) publication Best Management Practices for the Application of Turf Pesticides and Fertilizers. Plans must be reviewed by BPC and Maine Department of Health and Human Services Drinking Water Program and approved by town Planning Board.
Coplin Plantation	Aerial and/or mechanical application of pesticides prohibited.
Cranberry Isles	Permit required for forest management activities including pesticides.
Harpwell	Prohibits the use of the insect growth regulators (IGRs) diflubenzuron and tebufenozide and the aerial application of all IGRs and any insecticide whose product label indicates that it is harmful to aquatic invertebrates. Restricts the use of neonicotinoid insecticides.
Lebanon	Aerial pesticide application and non-agricultural herbicide use banned.
Limerick	Herbicide application to rights-of-way prohibited.
Limestone	Aerial application of pesticides adjacent to Trafton Lake restricted.
Manchester	Restricts the outdoor application of non-organic pesticides and sludge on town-owned land.
Montville	Spraying within town road rights-of-way is prohibited; requests the state not spray along state maintained roads.
Newburgh	Herbicide application on roadside rights-of-way prohibited.
New Gloucester	Application must be consistent with Department of Agriculture standards.
New Sweden	Aerial application of pesticides prohibited.
Ogunquit	Restricts the outdoor application of pesticides on public and private land. Pesticides used must be approved for organic use or exempt from Federal EPA registration.
Owl's Head	Herbicide application banned.
Porter	Pesticide and herbicide application by state and utilities within public rights-of-way prohibited.
Portland	Restricts the use of synthetic pesticides for all turf, landscape, and outdoor pest management activities in the City on both public and private property.
Rangeley	Powered application of pesticides on more than 2 acres restricted.
Rockland	Restricts the outdoor application of pesticides on town-(owned, leased or managed) land. Pesticides used must be approved for organic use or exempt from Federal EPA registration.
South Portland	Curtails the use of pesticides for turf, landscape and outdoor pest management.
Southport	State or commercial application of pesticides prohibited.
Standish	Storage of pesticides within the shoreland zone prohibited.
Sweden	All forest pesticide application and any aerial application within the aquifer protection district prohibited, powered applications over 1 acre restricted.
Waterboro	Hazardous waste generation permits required.
Wayne	Storage of pesticides within the shoreland zone prohibited.
Wells	Restricted use pesticide application within the Resource Protection District around Branch Brook and the Branch Brook Aquifer Protection District requires notice to the code enforcement officer and copy to Town of Kennebunk.

Source: http://www.maine.gov/dacf/php/pesticides/public/municipal_ordinances.shtml

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in pesticide application statewide, recognizing “with this kind of record at the state level, it is small wonder that municipalities and their citizens are working at the local level to protect themselves.” The organization spoke to the precedent in state and U.S. Supreme Court law affirming the local authority to regulate pesticides, and also cited state law in place since 1997 in Title 22, section 1471-X; “It is the policy of the State to work to find ways to use the minimum amount of pesticides needed to effectively control targeted pests in all areas of application.”

Harpswell’s legislators, Sen. Brownie Carson of Cumberland County and Rep. Jay McCreight of Harpswell, also defended the longstanding authority of municipalities to adopt ordinances that their communities believe will protect their environments, calling the ordinance adoption process intelligent and responsible, and in furtherance of the state policy cited above. Maine Audubon agreed, claiming the bill would prevent communities from mak-

ing decisions in the best interest of their health and environment’s well-being. In its testimony, MOFGA acknowledged the intersection of environmental impacts with public health by referencing a report by the U.S. Geological Survey that 33% of major aquifers and 50% of shallow wells contain detectable levels of one or more pesticides.

In addition to recognizing the legitimacy of using home rule to protect communities’ health and local economies, MMA’s testimony dissected the nature of existing ordinances, highlighting how they generally take a scalpel rather than sledgehammer approach. The association also questioned why proponents, for the second year in a row, have not provided a single example of actual harm to their businesses as a result of municipal ordinances. In this context, it was hard to avoid acknowledging the irony of proponents’ testimony that ordinances are not based on science given that the proposed preemptions do not appear to have any evidentiary justification.

Work session. Following the hearing, the committee broke into partisan caucuses and returned for a work session, where members voted 9 to 2 against passing the bill. One member, Rep. Lester Ordway of Standish, voted in favor of the bill as printed while expressing his wish that there would have been more time to digest the testimony.

The other member voting in the minority, Sen. Lisa Keim of Oxford County, voted to require draft ordinances to be submitted to the state Board of Pesticides Control 90 days prior to being voted on locally in order to allow the board to provide the municipality with feedback on its ordinance before adoption. She also wished to send a letter to the board reflecting concerns expressed by the public regarding the board’s reported shortcomings in recent years. As another committee member, Sen. Susan Deschambault of York County, put it while referring to the board’s actions, “I wasn’t impressed then [last year], and am less impressed today.”

LEGISLATIVE HEARINGS

Note: You should check your newspapers for Legal Notices as there may be changes in the hearing schedule. Weekly schedules for hearing schedules and work sessions can be found at: <http://legislature.maine.gov/Calendar/#PHWS/>.

Monday, March 26

Education & Cultural Affairs

Room 202, Cross State Office Building, 1:00 p.m.

Tel: 287-3125

LD 1869 – An Act To Establish the Total Cost of Education and the State and Local Contributions to Education for Fiscal Year 2018-19 and To Provide That Employees of School Management and Leadership Centers Are Eligible To Participate in the Maine Public Employees Retirement System.

LD 1870 – An Act To Reorganize the Provision of Services for Children with Disabilities from Birth to 5 Years of Age.

IN THE HOPPER

(The bill summaries are written by MMA staff and are not necessarily the bill's summary statement or an excerpt from that summary statement. During the course of the legislative session, many more bills of municipal interest will be printed than there is space in the *Legislative Bulletin* to describe. Our attempt is to provide a description of what would appear to be the bills of most significance to local government, but we would advise municipal officials to also review the comprehensive list of LDs of municipal interest that can be found on MMA's website, www.memun.org.)

Education & Cultural Affairs

1870 – An Act To Reorganize the Provision of Services for Children with Disabilities from Birth to 5 Years of Age. (Sponsored by Sen. Langley of Hancock County)

Over a 2-year transition period, this bill moves responsibility for providing special education and related services for children who are at least 3 years of age and under 6 years of age from the federal and state funded Child Development Services System (CDS) to the school administrative units of residence of the qualifying children. Under the bill, beginning July 1, 2018, a school administrative unit that is the unit of residence for a child with a disability who is at least 3 years of age and under 6 years of age may become “early adopters” and take responsible for providing special education and related services to that child prior to the mandated July 1, 2020 implementation date. Early adopters may qualify for Department of Education (DOE) support including access to first-year start-up funds available from state and federal resources as well as reallocation of available CDS funds. Other resources potentially available to early adopters include Priority 1 status under the School Revolving Renovation Fund for necessary facility upgrades and renovations, the inclusion of seat belts and car seats as an allowable component for bus purchases, and administrative and technical support to enhance the consistent delivery of services to qualifying children. The bill also shifts responsibility for providing services to children from birth to under 3 years of age from CDS to the DOE's office of special services. The funding plan continues the present arrangement of full responsibility for costs being shared by state funds, federal funds, the MaineCare program and private insurers.

Health & Human Services

1873 – An Act To Align State-funded Benefits with Federal Eligibility Standards. (Governor's Bill) (Sponsored by Rep. Sanderson of Chelsea.)

This bill amends the definition of “eligible person” in the municipal general assistance laws to repeal the provision in state law that affirmatively provides that a person who is lawfully present in the United States or who is pursuing a lawful process to apply for immigration relief is eligible for municipal general assistance for up to 24 months and to instead state that these noncitizens are not eligible for state-funded general assistance. The bill also repeals the provision requiring the Department of Health and Human Services to provide SNAP (Supplemental Nutrition Assistance Program), TANF (Temporary Assistance to Needy Families) and SSI (Supplemental Security Income) benefits to noncitizens who would be eligible for these benefits but for their status as aliens under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.