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WV Senate passes bill targeting county oversight of agricultural operations

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West Virginia Legislature, Photo By Will Price

West Virginia Senate Energy, Industry and Mining Committee Chair Randy Smith, R-Tucker, defended a bill on the Senate floor Friday that opponents fear would make localities more vulnerable to health and safety threats from agricultural operations. The bill would bar county commissions from adopting any ordinance, rule, license requirement or other authorization stricter than state law, rule or regulation regarding agricultural operations.

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The West Virginia Senate has passed a controversial bill lifted from last year's regular legislative session that would prohibit county commissions from passing ordinances or rules stricter than state law regarding agricultural operations.

Approved Friday without opposition, just two days into the 2024 regular legislative session, [Senate Bill 171](#) would bar county commissions from adopting any ordinance, rule, license requirement or other authorization stricter than state law, rule or regulation regarding agricultural operations.

If SB 171 becomes law, any past such measure adopted by a county commission would be revoked.

SB 171 also would bar county commissions from adopting measures that prohibit the purchase of any federally or state-registered pesticide, herbicide or insecticide product or alter the allowed use of any such product.

SB 171 now goes before the House of Delegates after sailing through the Senate, having skipped the committee consideration process.

Led in sponsorship by Senate Agriculture and Natural Resources Committee Chairman Bill Hamilton, R-Upshur, the bill was introduced the first day of the legislative session on Wednesday.

The measure is identical to [SB 585](#) of the 2023 legislative session, which passed the Senate in a 32-1 vote before it stalled in the House Judiciary Committee.

Senate Energy, Industry and Mining Committee Chairman Randy Smith, R-Tucker, defended SB 171 on the Senate floor Friday by offering assurance it wouldn't "stop windmills and solar farms" or "mess with the forestry."

"You can still cut your trees," Smith said. "You can still do anything like that."

But opposition to SB 171 is rooted in fear the bill is state overreach that risks ushering in operations viewed locally as health and safety threats that exploit the state's wide-ranging definition of agriculture.

“I just don’t think they appreciate how broad the definition of agriculture is and how it creates immense ambiguity as to what exactly this law is protecting,” Hardy County resident John Rosato said Friday.

Concerns with broad definition of agriculture

SB 171 concerns those in Hardy County who fear the bill could be a boon for potential operations like a proposed log fumigation facility that [drew widespread opposition](#) among county residents last year.

Grant County-based Allegheny Wood Products proposed a site that would have allowed it to emit up to 9.55 tons per year of a neurotoxic gas the federal Centers for Disease Control and Prevention says can cause nausea, respiratory irritation and even death.

That gas was methyl bromide, a pesticide used as a fumigant for domestically sourced logs prior to export. A state Department of Environmental Protection engineer recommended the agency approve the permit for the site.

But Allegheny Wood Products [withdrew its permit application](#) amid local zoning uncertainty.

Hardy County officials had urged the DEP to consider the proposed permit for a site in an agricultural zoning district. Primary use of a property for activity centered on use of hazardous material was only permitted in an industrial zone with conditional approval, Hardy County Planner Melissa Scott said in a statement she attributed to the county planning commission at a DEP public hearing.

Allegheny Wood Products asserted its proposal fit the agricultural zoning requirement.

Representing the company in an email to the DEP obtained by the Gazette-Mail through a Freedom of Information Act request, Steptoe & Johnson Environmental Services LLC Director John Keeling said pesticide application is a “routine agriculture activity.”

Scott said Friday SB 171 risks allowing activities far beyond what most West Virginians think of as agriculture.

[State code defines](#) “agricultural operation” as any facility used for agriculture, and defines agriculture very broadly. The definition includes “the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry.”

The definition also includes “the practice of forestry, silviculture, horticulture, harvesting of silviculture products, packing, shipping, milling, and marketing of agricultural products conducted by the proprietor of the agricultural operation, or any other legal plant or animal production and all farm practices.”

Silviculture is the growing and cultivation of trees.

Rosato said Friday he fears SB 171 would “eviscerate any local control” over the placement of operations like a log fumigation site within certain distances of schools, parks or residential neighborhoods.

State code says no complaint can be maintained in “any court of this state” against an agricultural land owner or operator unless:

- The complainant used and occupied neighboring land before the agricultural operation took place
- The agricultural operation has caused or will cause “actual physical damage to the person”

[State code says](#) no agricultural operation can be deemed a nuisance if it’s conducted in compliance with all applicable state and federal laws, regulations and permits.

“This is the nuisance moving to me, not me moving to the nuisance and saying it needs to go away,” Rosato said of the impact he fears from SB 171.

SB 171 one of 31 bills on fast track to Senate passage

SB 171 was one of 31 bills the Senate passed Friday morning, part of a mass fast-tracking of bills previously approved by the Senate that failed to become law. None of the bills went through a legislative committee before full Senate passage.

Addressing colleagues on the Senate floor Friday morning, Senate President Craig Blair, R-Berkeley, alluded to and rejected past criticism the body has circumvented the legislative process by fast-tracking bills to begin sessions. The legislative session is a 60-day affair that ends March 9.

“We’re operating at the speed of business in this state, not the speed of government,” Blair said. “We’ve got 60 days to do the work of the people of West Virginia, and you guys demonstrate that you’re willing to press down on the accelerator and make a difference for the people in the state of West Virginia.”

Hardy County Commissioner Steven Schetrom sounded a note of worry about SB 171 and touted the importance of discussion Friday.

“We do have concerns about the implications of this bill going forward, and hope that we can continue to have discussions related to these very important issues, so that key decision-makers are able to make choices that lead to the best outcomes for West Virginians,” Schetrom said in an email.

“There is no doubt that this bill removes county powers to regulate agriculture,” Scott said. “The devil is in the details.”

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