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Bill targeting county agricultural oversight nears final passage

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Pictured is the West Virginia House Government Organization Committee during a meeting Wednesday at which it recalled and then advanced again Senate Bill 171 after removing an amendment from the bill. The bill targets local control over agricultural operations.

PERRY BENNETT | West Virginia Legislative Photography

A bill targeting county oversight of agricultural operations is nearing final passage in the West Virginia Legislature.

[Senate Bill 171](#) would bar county commissions from passing ordinances or rules stricter than state law regarding agricultural operations.

The House of Delegates Government Organization Committee approved SB 171 twice this week, removing an amendment that had been made to the bill Wednesday and advancing it to the full House a second time after first approving the measure Monday.

The panel's Monday approval of SB 171 came despite an observation from committee counsel the bill could lead to litigation due to potentially varying interpretations of how state silence on certain operations implicates language that county commissions may not adopt an ordinance "stricter than" any state law or regulation on agricultural operations.

After opposition from Government Organization Committee Vice Chairman Pat McGeehan, R-Hancock, the committee rejected an amendment proposal from committee Minority Vice Chairman Ric Griffith, D-Wayne, that would have allowed a county or planning commission to "reasonably enforc[e] any ordinance enacted for the protection of the health safety of the citizens."

McGeehan objected to the word "reasonably," saying it was "very subjective."

But the committee blocked Griffith from an attempt to remove "reasonably" from his proposed amendment.

The committee on Monday approved and then on Wednesday rescinded an amendment from Delegate Mark Dean, R-Wayne, that would have excluded solar farms from the definition of "agricultural operation" under the bill unless they allow for grazing.

Bill would revoke past county law stricter than state law

If SB 171 becomes law, any ordinance, rule, license requirement or other authorization stricter than state law, rule or regulation regarding agricultural operations adopted by a county commission would be revoked.

Concerns have mounted over the bill.



Bill targeting county agricultural oversight renews WV overreach fears

By Mike Tony mtony@hdmediallc.com 5 min to read

Worries have been especially prevalent in Hardy County, where county zoning oversight has been an obstacle to agricultural and energy projects that many residents have viewed as health and safety risks.

“[H]omeowners get completely trampled on in this bill,” Hardy County resident John Rosato told the Gazette-Mail last month.

Rosato had in mind the possibility of a log fumigation site, after a proposal for one in the county drew widespread resident opposition last year before Grant County-based Allegheny Wood Products [withdrew its permit application](#) amid local zoning uncertainty.

SB 171 follows a 2022 bill targeting local oversight of agricultural operations, Senate Bill 242, in drawing ire from Hardy County opponents.

SB 242 limited the authority of counties and municipalities to limit use of land of any size for a farm or agricultural operation by the owner.

The state's definition of agricultural operation is broad, covering any facility used for production of food, fiber and woodland products, plus forestry, cultivation of trees and gardens, packing, shipping, milling and marketing of agricultural products conducted by the proprietor "or any other legal plant or animal production and all farm practices."

"The passage of SB 171 is just a doubling down and removal of more county tools to fight these things," Hardy County Planner Melissa Scott [told the Gazette-Mail](#) last month.

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.

Conservation West Virginia, a Jefferson County-based conservationist group, has opposed SB 171, saying in a statement it shows the Senate's "disdain for democracy" and predicting it would "create uncertainty and frustration in local government."

"If enacted, the bill would have a far-reaching effect and would further diminish local control over land use in favor of legislators in Charleston," Conservation West Virginia said.

The West Virginia Environmental Council also has opposed SB 171, noting local communities would be barred from enforcing regulations that exceed state laws on pesticides to protect public health.

Poultry farm water use driving SB 171 concerns

There's evidence that the West Virginia Farm Bureau, whose 10,000 members statewide include small and large agricultural operators, would seize upon SB 171 to fight against what Farm Bureau government affairs director Dwayne O'Dell told the Gazette-Mail last month has been some counties considering ordinances that exceed state environmental code.

Last year, Charleston-based attorney Mark Sadd objected in a letter to the Hardy County Planning Commission to a proposed county comprehensive plan's goal of "effectuat[ing] regulation" on farming expansion by citing SB 242.

Sadd contended SB 242 removes Hardy County authority to implement development standards that govern farmland owners through subdivision or zoning regulation.

Sadd questioned whether Hardy County "could possibly develop the necessary competence and oversight to enforce soil and water quality and management standards," saying that West Virginia already addresses those standards through state laws, regulations and rules.

But there's an exemption in state environmental oversight that has fueled worries in Hardy County.

West Virginia code explicitly excludes farm use, "including watering livestock or poultry on a farm," from the state's definition of large-quantity water users under environmental regulation.

West Virginia Department of Environmental Protection spokesman Terry Fletcher said the agency isn't aware of any other water use regulations under its authority that would apply to farm use activities.

Fletcher similarly said that per the state Department of Health, the department's Office of Environmental Health Services in the Bureau of Public Health isn't aware of any water use regulations under its authority that would apply to farm use activities.

The exemption looms large in Hardy County given its high concentration of large-scale poultry farms.

“Our ultimate fear is that they will use up all the water,” Scott said.

Scott estimated poultry houses each use up to 3,000 gallons of water per day.

O’Dell said two-unit chicken houses aren’t economically feasible anymore due to industry centralization.



WV Senate passes bill targeting county oversight of agricultural operations

By Mike Tony mtony@hdmediallc.com  3 min to read

House Government Organization Committee counsel interpreted SB 171 to disallow a county from passing an ordinance to try to protect “equal use of the groundwater from a large entity” in response to a question from Griffith regarding the bill’s potential impact on county oversight of that use.

SB 171 passed the Republican-supermajority Senate with [no debate and no committee consideration](#) last month two days into the legislative session, fast-tracked along with other bills lifted from last year’s session. The lead sponsor of SB 171 is Agriculture and Natural Resources Committee Chairman Bill Hamilton, R-Upshur.

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