

# Portland Press Herald

Posted April 1

Updated April 1

## LePage looks to override local pesticide rules in 30 municipalities. But why?

More communities are developing ordinances meant to protect residents from toxic chemicals linked to cancer and birth defects.

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Cathy Chapman, master gardener and a coordinator of Protect South Portland, supported the city's pesticide ordinance, which passed in 2016. *Staff photo by Derek Davis*

Even though Paul Schlein is a careful, detail-oriented sort, he didn't fuss over his testimony before heading to Augusta late last month for a hearing on a pesticides bill. The Arrowsic retiree planned to testify against the bill, which came from Gov. Paul LePage's office and was crafted to override municipal ordinances that set stricter limits on pesticide use than the state does.

Schlein simply printed out the same statement he'd used last year, when Gov. LePage floated slightly differently worded legislation that would have had the same impact: shutting down local ordinances like the one that had just passed in South Portland.

"There was no need to write it again because nothing changed," Schlein said.

A few things had. Maine's biggest city, Portland, passed its own pesticide ordinance this January and it was a strong one, banning synthetic pesticides for both residents and city workers. And while the 2017 bill, LD 1505, had been such a close mirror of a bill authored by the American Legislative Exchange Council, a national pro-business conservative group generally referred to as ALEC, that one had to focus hard to see the differences, the current bill, LD 1853, had different phrasings. But the intent was the same. The bill Schlein testified against deviated a little further from the ALEC language, but would

still have rendered moot the 30 municipal ordinances that limit pesticide use in Maine.

Although some of those ordinances are nearly 50 years old, increasingly, Maine municipalities, particularly along the coast, have been developing local ordinances with the stated purpose of protecting their residents from the toxicity of pesticides that have been linked to cancer and birth defects. The ordinances also cite concerns over toxic chemicals getting into waterways, affecting marine life and harming other wildlife, including – in the case of a 2004 Harpswell ordinance – the health of pollinators.

Among those speaking in favor of LePage's bill were commercial pesticide applicators and a representative from the Samoset, who raised concerns over maintaining the resort's golf course if Rockland ever banned all pesticides (in 2014, Rockland voted to restrict pesticide use on town-owned, leased or managed lands). Farm Bureau was also in attendance, as well as several anxious vegetable farmers and an apple farmer who do use pesticides and want to be sure they can continue to do so.

The governor's argument against the ordinances is that they create confusing complications to the current system, whereby licensed, trained applicators apply pesticides. "These ordinances only really prohibit the commercial companies from operating in certain towns," his spokesperson Julie Rabinowitz said in an email. "However, the commercial operators are specifically trained in the safe use and hazards of these chemicals and apply them properly and in the minimum amount needed."

## **Places in Maine that control pesticide use**

Not always, otherwise the Maine Board of Pesticide Control, which regulates and enforces pesticide use in the state, would never have to deal with violations. The current chair of the Board of Pesticide Control, Deven Morrill, works for Lucas Tree Experts, a Portland company that has failed to notify an abutting property owner before applying pesticides three times since 2010, and once done so without sufficient notice. The most recent violation was in Scarborough in 2015 and for that, the company was fined \$2,000.

But with commercial operators no longer allowed to use pesticides in some municipalities with ordinances, Rabinowitz theorizes that homeowners – who aren't trained in applications – will end up using pesticides themselves, increasing the chances of chemicals being used or stored improperly. "In this instance, a well-intentioned local ordinance may actually cause exactly the unintended consequence it was trying to prohibit or discourage," Rabinowitz wrote. "This is another case where a statewide, cohesive policy best serves the public interest."

But fighting these local ordinances has seemingly turned into a quixotic effort for LePage. This is the third time Republican-led legislation to suppress the ordinances has been introduced in as many years (in 2016, Republican Rep. Jeff Timberlake introduced similar legislation, which didn't make it out of committee). Even after last year's pesticide ordinance bill failed, it popped up again during last summer's tense budget negotiations as an item that, if slipped in, would appease the governor. "At one point, there were like 11 or 12 items that he wanted," said State Sen. Tom Saviello (R-Wilton), who presented the governor's new bill to the State and Local Government committee last month. "Somehow, that was one of the items that he wanted."

That idea "died pretty quickly," Saviello said.

This bill appears headed to another defeat after a split vote with 9 of the 11 committee members present voting "ought not to pass" on it. The earliest it would be reported out of the committee and head back to the full legislature would be this coming week.

"I don't care if the bill dies or not," Saviello said after the hearing. He said he testified for the bill because he saw it as an opportunity to increase public awareness. Saviello served on the Maine Pesticide Control Board for 15 years, and he believes Mainers need to be as educated on the toxicity of that rat poison they're using in the home as those who are licensed to use pesticides commercially.



Portland's pesticide ordinance includes exemptions for Riverside Golf Course, above, and Hadlock Field. *Press Herald file photo*

“I don’t really care what the governor wants,” Saviello said. “But this was personal to me. I hate ALEC. I want nothing to do with ALEC. They are paid by the Koch brothers.” He was referring to the powerful billionaire brothers who support Republican candidates and have poured money into ALEC. But the bill Saviello presented did not offer any educational tools for home use of pesticides. It merely provided an exemption from municipal ordinances to “commercial applicators and spray contracting firms and to private applicators when the private applicators are producing agricultural or horticultural commodities.”

“I am not trying to circumvent the local ordinances,” Saviello said. “I just want people to know how to use them right.”

## **NO ORDINARY ORDINANCES**

There are 488 municipalities in Maine, according to Garrett Corbin, a legislative advocate for the Maine Municipal Association and one of the more than a dozen

who testified against the governor's bill along with Schlein (many more submitted written testimony on both sides of the issue). Only about 6 percent have passed municipal ordinances relating to pesticides. Under home rule (more on that later), they're allowed to establish these local regulations.

The ordinances vary widely and are spread across 13 of Maine's 16 counties. The smallest community to enact one, Brighton Plantation in Somerset County, had a population of 70 at the 2010 census. Eleven have been enacted since 2001, and in the last two years, the number of Mainers living in communities with pesticide ordinances shot up significantly when Portland and South Portland (combined population nearly 93,000) enacted ordinances.

Jay Feldman, the executive director of Beyond Pesticides, a nonprofit that advocates for pesticide-free communities (and advised Portland and South Portland on ordinances), attributed recent developments to the high-profile presence of Maine Organic Farmers and Gardeners Association.

"This is happening in Maine I believe because of organizations like MOFGA that have been so successful in penetrating the market with organic brands," Feldman said. "People in Maine have an intuitive sense that these chemicals are not needed to manage lawns and landscapes." Falmouth and York are both exploring ordinances, and Feldman expects Falmouth to be next in enacting one. "I think we'll have most of the communities around Casco Bay. There are a lot of really intelligent people in Maine who have done a lot of research on the science."

Maine's first local pesticide ordinance was enacted in March 1970. That's when residents of Owls Head voted at their annual town meeting "to outlaw the use of defoliants and stop all roadside spraying with poisons..." It was the Vietnam era, and chemical defoliants like the highly toxic-to-humans Agent Orange were very much in the news.

Some of the ordinances on file at the Maine Pesticide Control Board feature handwritten notes from the town. (All municipal ordinances must be filed with the board in a timely fashion or they're voided, as Ogunquit learned in 2014). Others look like they came out of a dot matrix printer. They have origin stories, many of them personal. Limerick's 1988 ordinance limiting roadside spraying was instigated by a mother whose child had developed leukemia.

In Allagash, one of the three Aroostook County municipalities with a pesticide ordinance, a ban on herbicides being used in forestry was enacted in 2004. It sprang from a sense that something wrong was going on in the woods in the 135-square-mile municipality, where the J. D. Irving company used aerial spraying on its clear cuts to suppress sprouting hardwoods it didn't want in favor of spruce.

"There were so many cancer patients," remembers Patricia Pelletier, whose son Louis led the movement to ban herbicides. "You couldn't pick the berries around town."

Allagash still allows residents to put herbicide on say, a stump they are trying to get rid of, Louis Pelletier said. But the ordinance altered the way J. D. Irving conducts its forestry, he said.

The herbicides the foresters were using were legal, Pelletier said, and supposedly safe. "But I had done some research at the time," he said. "And it depends on what scientists you ask. The chemicals they were using were basically safe on their own, but there was no testing done when you mixed them."

Allagash wanted, he said, to "err on the side of caution," and the ordinance passed overwhelmingly.





Proponents of pesticide regulation frequently cite a desire to protect pollinators and other wildlife. Opponents may include those working in commercial operations. "We have zero financial incentive to over-apply pesticides," says Jacob Harvey, the general manager for a franchise of TruGreen lawn care of Westbrook. "We pass exams set by the state. We know what we are doing." *Staff photo by Gregory Rec*

"The Irving boys didn't like it too much," Pelletier said. "But they are still making money, and we're not getting sprayed."

Among those testifying at the committee hearing on LePage's bill were representatives of some commercial operations that could be affected by municipal ordinances, including the National Association of Landscape Professionals and Jacob Harvey, the general manager for a franchise of TruGreen lawn care based in Westbrook. Harvey said his company has about 50 employees at peak season.

"This issue will literally put people out of business," Harvey added, pleading against being "lumped together with any bad actors. We have zero financial incentive to over-apply pesticides."



“We pass exams set by the state,” Harvey said. “We know what we are doing.”

## **MEMBERS OF THE BOARD**

One of the issues raised at the March 21 committee meeting and public hearing on the legislation had to do with the competency of the Maine Board of Pesticide Control (BPC), which is an appointed group established to oversee and license pesticide use in the state. Schlein, who served as the public information officer for the board from 2005 until 2013 spoke about how the dynamics of the board had changed since LePage appointees joined it. He said the board had operated without a required member from the medical community for a year and a half and had canceled some meetings. “The current board steadfastly refuses to allow the staff to work with towns,” Schlein told the committee. “The BPC is not doing its job.”

After he spoke, others also questioned the work of the board, and by the time the hearing reached its conclusion, members had agreed to write a letter asking the Agriculture committee, which oversees the pesticide board, to look into its work. There was skepticism in some quarters.

“If we send it, fine,” said Sen. Susan Deschambault (D-York). “I don’t think it will do anything. The board is its makeup. They were appointed.”

The concerns crossed party lines.

“When I hear the public come and talk about this and say that we are having an issue, that is troublesome to me,” said Rep. Richard Pickett (R-Dixfield). “It is time for them to make sure that board is doing what it is supposed to be doing.”

Rabinowitz defended the governor’s picks for the board as all “confirmable” appointments. Five of the seven seats are filled with LePage appointees, including chair Deven Morrill, a licensed arborist with Lucas Tree Experts. “The governor has strived to ensure that his appointments include individuals with a scientific background.”

Coincidentally, the director of the Board of Pesticide Control, Cam Lay, recently left his job. His last day was two days after the March 21 hearing. The board is looking for a replacement.

Tom Saviello, who served on the Board of Pesticide Control from 1983 until 1998 and credits it with teaching him how to mediate, said in an interview that he had heard criticism of the current board that made it sound very different from the board he'd been on.

"I can't tell you what the governor has done to it."

He said he understands why municipalities would create ordinances of their own if they felt underrepresented in Augusta.

"What else are they going to?" Saviello said. "They are going to create their own ordinance. I don't blame them."

Feldman, of Beyond Pesticides, sees the action by Maine municipalities as reflective of national politics, during an era when the Environmental Protection Agency is led by Scott Pruitt, an attorney who frequently sued the EPA before joining it.

"There is a new dimension to this in the current political context, in the dismantling of our federal regulatory agencies," Feldman said. "There is a clear agenda to reduce staff and to effectively eliminate enforcement of federal levels, to shift it to state governments."

These local ordinances are trying to address flaws in the Environmental Protection Agency's methods, he said. "What is the effect of mixtures of chemicals?" Feldman said, echoing Louis Pelletier's concerns that led to the 2004 Allagash ordinance. "It's a question that EPA does not ask or answer, because it doesn't really have the resources."

## **RIGHT TO FARM**

There are two more twists and turns to the debate over pesticides in Augusta. The first has to do with a perceived but unlikely threat posed to agriculture by the municipal ordinances, the second has to do with home rule.

Among the farmers who spoke in favor of LePage's bill was Penny Jordan of Jordan Farm in Cape Elizabeth, who is also the president of Maine Farm Bureau. "If this bill does not pass, it is going to put farms at risk," she told the committee.

But many, if not most, municipal pesticide ordinances specifically exclude agriculture. In addition, Maine passed a Right to Farm Law in 2007 that exempts agricultural and composting operations from municipal ordinances and prevents them from being considered a "nuisance." Doesn't that mean they're protected?

"The operating assumption has been that municipal ordinances don't apply to agriculture," John Bott, a spokesman for Maine's Department of Agriculture, Forestry and Conservation wrote in an email. He added that it is unclear whether the applicability of local ordinances has been tested in court.

Reminded of the Right to Farm Act, Jordan said she still worried that the municipal ordinances could have a negative impact on farms. From her perspective, these ordinances, should they reach Cape Elizabeth (she bets they will) will put her and other farmers in a position of having "to constantly go and prove that what they are knowledgeable about and responsible in what they do on a daily basis."

The thrust of LePage's proposed legislation, offering commercial operators exemptions to those local ordinances, seems to stand in direct opposition to one of the defining characteristics of the Maine constitution: the principle of home rule, whereby municipalities have the right to establish their own regulations.

The authority of home rule was cited in a law that LePage unexpectedly signed in 2017 allowing municipalities to declare themselves food sovereign, that is, able to establish their own rules about selling local foods to each other. "The governor believes in home rule as a general principle but recognizes that it is not the best policy in every instance," LePage's spokesperson, Julie Rabinowitz,

said. He's argued against local changes to the minimum wage, for instance, she said, on the grounds they would cause confusion and enforcement issues.

Feldman, unsurprisingly, disagreed. Opting to ignore home rule in some instances, like the pesticide ordinances, "exemplifies big government intruding on a local democratic decision."

In the end, the majority of committee members who voted "ought not to pass" on LePage's bill cited their belief in and support of home rule as the reason.

If this version of the bill dies, will it come back again before LePage hands over the gubernatorial reins to someone else in 2019?

"It would be premature to speculate," Rabinowitz said.

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