

Opinion states Maryland law trumps most of county pesticide ban

■ Only minor parts of proposed move would not conflict with state rules

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The heart of Montgomery county's proposed ban on pesticides would be trumped by state law, according to an opinion from the Maryland attorney general's office.

Del. Kirill Reznik requested the opinion on behalf of the Montgomery County Farm Bureau, a group vehemently opposed to the county's proposed ban.

Montgomery County is considering a ban on "nonessential" pesticide use on lawns, with some exceptions, such as for golf courses.

While some provisions — including requiring the county

executive to develop a list of non-essential pesticides and banning application on county property — don't conflict with state law, the overall ban would be preempted by existing state law, the opinion says.

The proposed pesticide ban has strong support from organizations such as Safe Grow Montgomery, but has staunch opposition from the lawn care industry and the Farm Bureau, which sees the measure as a step

toward more restrictions on agriculture.

Reznik (D-Dist. 39) of Germantown said he requested the attorney general's advice on whether existing state law already regulated pesticides after members of the Farm Bureau approached him.

Farm Bureau President Lonnie Luther said his organization views the proposed ban as "one of the worst bills anyone could conjure up."

State and federal law regulate pesticides, leaving no need for the County Council to do so, Luther said.

The Attorney General's Office came to a similar conclusion.

In an April 1 opinion, Assistant Attorney General Kathryn M. Rowe said it was her view that "a court would conclude that this provision [barring the application of nonessential pesticides to a lawn, with certain exceptions] would interfere with the purposes of these State provisions, as well as the goal of achieving uniformity." In other words, state law already regulates pesticides, so the local ban would be preempted, if challenged in court.

Safe Grow Montgomery had not seen the opinion until Friday, and said in a statement Monday that it does not agree with the attorney general's office.

"The AG opinion overlooks important factors used to analyze whether the General Assembly intended to exclusively occupy a field — in this case, the field of pesticides," the statement read. "The AG opinion mischaracterizes text from the Maryland pesticide law as signifying intent to prevent local legislation, and to promote uniformity."

In its statement, Safe Grow Montgomery wrote that "it is misleading and incorrect to take statutory language out of context to imply statutory intent."

Council President George L. Leventhal, the bill's author, said he does not see the opinion standing in the way of passage.

"Our legal staff does not think

that we're pre-empted," he said. Proponents of the measure argue that it would protect county residents and pets from unnecessary exposure to chemicals that many believe to be toxic.

Leventhal (D-At Large) of Takoma Park said the attorney general opinion is not the first time pre-emption has come up, and added that "as the letter states, it would only arise in the event of a lawsuit."

"And, my goodness, virtually every bill we pass is potentially subject to a lawsuit," he said. "So, as I say, I don't think there's anything in this letter that will inhibit the council [from] moving forward on pesticides."

However, Luther said his organization is poised, with backing from state and national farm bureaus, to file a lawsuit should the bill pass.

"We like to farm. That's our life's passion," Luther said. "And, really, lawn care is part of agriculture. So we feel like this bill steps on our toes."

The way the bill is worded, farmers fear that, while they are exempt under the bill, agriculture "would be next," and the bill sets the framework for putting farmers out of business, Luther said.

Luther owns L&M Farm in Damascus with his wife. They harvest about 500 acres of hay and raise 100 sheep, 200 Angus beef cattle and 400 "fancy" chickens, he said. The farm also has a greenhouse and garden.

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