SB

409

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary 4/26/86 8:30 AM Teleconference

" " 4/29/86 1:30 pm

HOUSE

COMMITTEE REPORT

(7)

Date referred: 4/11/86

(referral to Resources waived 4/11) FURTHER REFERRALS:

DATE: _____

The JUDICIARY Committee has considered CSSB 409 (Res)

"An Act relating to a right to farm."

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with HCSCSSB 409 (JUD) [ ] same title

[ ] new title

and recommends _____

[ ] further referral to the _____ Committee

and attaches:
[ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman

WORK DRAFT

Bradley
4/24/86

Original sponsor: Kerttula

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 409 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to a right to farm."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that agriculture makes an important contribution to the economy of the state and that the encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the state. The legislature further finds that conflict between agricultural operations and urban and suburban land uses threatens the permanent loss of agricultural land.

* Sec. 2. AS 09.45 is amended by adding a new section to read:

Sec. 09.45.235. AGRICULTURAL OPERATIONS AS PRIVATE NUISANCES. (a) An agricultural operation and an operation appurtenant to an agricultural operation is not and does not become a private nuisance by a changed condition that exists on neighboring land if the agricultural operation has been in operation for more than three years and if the agricultural operation was not a nuisance at the time the agricultural operation began.

(b) The provisions of (a) of this section do not apply to

(1) liability resulting from improper or negligent conduct of agricultural operations or operations appurtenant to an agricultural operation; or

(2) flooding.

(c) The provisions of (a) of this section supersede a municipal ordinance, resolution, or regulation to the contrary.

(d) In this section, "agricultural operation"

(1) means land, buildings, or structures on or in which agriculture and farming activities are carried on;

(2) includes

(A) the residence or residences of owners, occupants, or employees located on the land;

(B) any agricultural and farming activity such as

(i) the cultivation, conserving, and tillage of the soil;

(ii) dairying;

(iii) the operation of greenhouses;

(iv) the production, cultivation growing, and harvesting of an agricultural, floricultural, or horticultural commodity;

(v) the raising of livestock, bees, fur-bearing animals, or poultry;

(vi) forestry or lumbering operations;

(C) any practice conducted on the farm as an incident to or in conjunction with activities described in (B) of this paragraph including, though not restricted to,

(i) preparation for market or delivery to storage or to market or to carriers for transportation to market of any products or materials from the agricultural operation;

(ii) transportation to the agricultural operation of farm workers or supplies and materials; and

(iii) the marketing or selling at wholesale, retail, or in any other manner of a product from the agricultural operation.

(d) In this section, "agricultural operation"

(1) means land, buildings, or structures on or in which agriculture and farming activities are carried on;

(2) includes

(A) the residence or residences of owners, occupants, or employees located on the land;

(B) any agricultural and farming activity such as

(i) the cultivation, conserving, and tillage of the soil;

(ii) dairying;

(iii) the operation of greenhouses;

(iv) the production, cultivation growing, and harvesting of an agricultural, floricultural, or horticultural commodity;

(v) the raising of livestock, bees, fur-bearing animals, or poultry;

(vi) forestry or lumbering operations;

(C) any practice conducted on the farm as an incident to or in conjunction with activities described in (B) of this paragraph including, though not restricted to,

(i) preparation for market or delivery to storage or to market or to carriers for transportation to market of any products or materials from the agricultural operation;

(ii) transportation to the agricultural operation of farm workers or supplies and materials; and

(iii) the marketing or selling at wholesale, retail, or in any other manner of a product from the agricultural operation.

Alaska State Legislature
Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

4-28-86

MEMORANDUM

TO: ALL MEMBERS HOUSE FINANCE COMMITTEE

FROM: SENATOR JAY KERTTULA

On April 26 during the hearing of SB-409 it was suggested that there be an amendment to the bill to define "agricultural operation". I had intitially included the definition in my request to legislative drafting-they felt the definition was unecessary and we deleted it.

I have enclosed the initial definition, and suggest that if the committee thinks that a definition is necessary that this definition be used. The Alaska Association of Soil and Water Districts supports this definition as does the state Division of Agriculture.

There are basically two approaches to defining "agricultural operations" in other states' right to farm laws. Some states do not define it. Other states use the "list" approach-and include such various things as mint farming and viticulture (grapes). I think that the attatched definition is fairly inclusive and would apply to silviculture (forestry). No other states include oyster farming or other marine cultivation in their right to farm legislation. I think that the application of the law to marine cultivation would be strained since the legislation essentially deals with the problems farms face when subdivisions encroach upon them.

I have also enclosed a copy of other states' right to farm bills that include definitions of "farming operation".

I appreciate your consideration of SB-409, and if a definition is adopted suggest the one I have attatched.

Thank you.

Jay Kerttula

Jay Kerttula

encl.
JK/bk

PROPOSED DEFINITION OF AGRICULTURAL OPERATION

"Agricultural operation" as used in this section means:

(1) any land or buildings or structures on or in which agriculture and farming activities are carried on and shall include the residence or residences of owners, occupants, or employees located on the land; and

(2) any agricultural and farming activities such as the cultivation, conserving, and tillage of the soil, dairying, greenhouse operations, the production, cultivation growing, and harvesting of any agricultural, floricultural, or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, forestry or lumbering operations, or any practices on the farm as an incident to or in conjunction with the activities including, but not necessarily restricted to, the following: preparation for market, delivery to storage or to market or to carriers for transportation to market, of any products or materials from the farm; the transportation to the farm of supplies and materials; the transportation of farm workers; and the marketing or selling at wholesale or retail or in any other manner any products from the farm.

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

4-11-86

Memo

To: Representative Mike Miller, Chairman House Judiciary Committee

From: Senator Jay Kerttula

Re: Senate Bill 409 (Right to Farm)

Dear Representative Miller:

Senate Bill 409 (now HCS for CS for SB409), relating to nuisance law and farming, is going to be waived by the House Resources Committee and should be assigned to House Judiciary today.

I would appreciate your scheduling SB-409 for a hearing as soon as possible. I have enclosed information on SB-409 for you. The Municipal League supports the policy behind right to farm legislation, and does not object to SB-409.

If you need any further information concerning the bill, please contact Beth Kerttula in my office.

Thank you for your consideration of SB-409.

Sincerely,

Jay Kerttula

JK/bk

Alaska Farmers & Stockgrowers
Association, Inc.
SRB Box 7463 Palmer, Alaska 99645

April 25, 1986

Representative M. Mike Miller
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Miller:

At this point in time with the legislative session rapidly coming to an end, I feel that I must inform you of the crisis and severe impact being felt across the agriculture communities of Alaska. Many of these same feelings are being felt nationwide in the agriculture sector.

There is pending legislation which is not going to cure all of the farm problems, but would save some farmers who are still trying to produce and deserve the right to survive.

There are many many farmers across the state who are not in financial trouble, they aren't making big money but they are "Alaska success stories." There are farmers that no amount of help, short of a total bail out, would help and I realize this will not be and should not be. Then there are the farmers who deserve a chance to survive. Crucial legislation that has immediate help for the short term is:

HB 193 Agriculture Production Incentive Program
SB 349 Re-organization of Delta Debt
SB 405 Loans Under Grain Reserve
SB 120 Miscellaneous Changes in Ag Law

Crucial legislation for the long term is:

SB 409 Right to Farm
SB 277 Fences For Cattle And Other Animals

I would ask for your support and passage of the above bills. Alaskan agriculture, which a good part is in the development stage, needs state support. We will then be a more important part of Alaska's economy, employing and feeding Alaskans.

Sincerely,

Jerry L. Giauque

Jerry L. Giauque, President
Alaska Farmers & Stockgrowers

JLG:pg

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

SOIL AND WATER CONSERVATION BOARD

Bill Sheffield, Governor

PO Box 949, Palmer, Alaska 99645

April 10, 1986

Representative M. Mike Miller
PO Box V
Juneau, AK 99811

RE: HB 632, SB 409

Dear Representative Miller:

The ASWCB feels that it is in the state's best interest to protect reasonable agricultural activities from nuisance lawsuits, and therefore supports the right-to-farm act, HB 632 and SB 409.

The agricultural operations which would be protected by this law are important to the economy of Alaska. At least thirty-two states have recognized the importance of agriculture to their economies by passage of right-to-farm laws.

With Alaska's expanding urban/suburban populations, the right-to-farm law would be an important factor in the continuation of the state's farming, ranching, silvicultural, horticultural, apiary and fur-farming industries.

Thank you for your consideration.

Sincerely,

Larry Davis

Larry Davis
Chairman

3-26-86

OVERVIEW OF COMMITTEE SUBSTITUTE FOR SENATE BILL 409,

"RIGHT TO FARM"

36 STATES HAVE A FORM OF "RIGHT TO FARM" LEGISLATION. 6 STATES HAVE LEGISLATION PENDING. NEW YORK PIONEERED THIS AREA IN 1971 WITH ITS AGRICULTURAL DISTRICT LAW.

CONNECTICUT'S "RIGHT TO FARM" BILL HAS BEEN UPHELD BY THE COURTS. WASHINGTON STATE HAS AN EXTREMELY STRONG "RIGHT TO FARM" STATUTE-IT CREATES A "CONCLUSIVE PRESUMPTION" THAT FARMING IS NOT A NUISANCE.

THE ALASKA MUNICIPAL LEAGUE'S POLICY STATEMENTS ARE SUPPORTIVE OF THE IDEA BEHIND "RIGHT TO FARM" LEGISLATION AND THE LEAGUE HAS NO OBJECTION TO THIS BILL.

CSSB-409 WILL NOT INTERFERE WITH MUNICIPALITIES' ZONING POWERS OR THE POWER OF EMINENT DOMAIN.

CSSB-409 DOES NOT AFFECT THE ALASKA CODES OF CIVIL OR CRIMINAL PROCEDURE. PEOPLE CAN STILL SUE CIVILLY UNDER AS 9.45.230 TO ENJOIN ACTIVITY THEY CONSIDER NEGLIGENT OR IMPROPER. SB-409 WILL CREATE A PRESUMPTION OF NON-LIABILITY IF THE FARM IS BEING RUN PROPERLY. CSSB-409 DEALS ONLY WITH PRIVATE NUISANCES, IT DOES NOT DEAL WITH PUBLIC NUISANCES-WHICH ARE CRIMES. PUBLIC NUISANCES, SUCH AS WATER POLLUTION, WILL CONTINUE TO BE PROSECUTED UNDER TITLE 46 OF THE ALASKA STATUTES. D.E.C.'S AUTHORITY IS NOT TOUCHED BY CSSB-409.

CSSB-409 HELPS FARMERS AVOID HARASSMENT LAWSUITS BROUGHT BY THOSE WHO MOVE IN AFTER THE FARM HAS EXISTED FOR AT LEAST 3 YEARS. THE FARM MUST NOT HAVE BEEN A NUISANCE AT THE TIME IT BEGAN FOR CSSB-409 TO APPLY, AND IF THE FARM IS BEING RUN IMPROPERLY OR NEGLIGENTLY CSSB-409 IS NO PROTECTION.

SB-409 IS SOMEWHAT FUTURISTIC IN ALASKA, BUT ACCORDING TO THE PLANNING DIRECTOR OF THE NORTH STAR BOROUGH, THERE ARE PRIVATE NUISANCE LAWSUITS PENDING RIGHT NOW THAT ARE CREATING REAL PROBLEMS FOR FARMERS IN THE FAIRBANKS' AREA.

A FEBRUARY, 1986, STUDY OF THE MAT-SU BORO DONE BY THE UNIVERSITY OF ALASKA UNDER THE DIRECTION OF DR. JAMES DREW SAYS THAT 98% OF THOSE SURVEYED ARE OPPOSED TO DEVELOPMENT ON AGRICULTURAL LANDS. THE STUDY CONCLUDED THAT "IT IS EVIDENT THAT SUPPORT FOR RETENTION OF FARMLAND-ASSOCIATED AMENITIES IS WIDESPREAD IN THE BOROUGH" (P.32 OF THE STUDY). THE STUDY NOTED NOT ONLY THE FUNDAMENTAL VALUE OF FARMLAND IN PROVIDING ALASKANS FOOD, BUT ALSO RECOGNIZED THE MORE ESOTERIC HISTORIC AND TOURIST VALUE, ALONG WITH THE "UNIQUE BEAUTY" (P.3) PROVIDED BY ALASKAN FARMLAND.

IT IS SIMPLY UNFAIR THAT A FARMER WHO HAS BEEN OPERATING PROPERLY FOR YEARS SHOULD BE DRAGGED INTO COURT DURING THE

MIDDLE OF A VERY SHORT GROWING SEASON FOR RUNNING A TRACTOR AT MIDNIGHT. SB-409 WILL HELP AVOID THIS SITUATION.

SB-409 IS ONE SMALL PROVISION THAT WILL HELP THE ALASKAN FARMER REMAIN PRODUCTIVE-AND THAT HELPS US ALL.

(LIST OF SUPPORTERS ON FOLLOWING PAGE)

LIST OF SUPPORTERS FOR SB-409

ALASKA STATE SOIL AND WATER CONSERVATION BOARD

(JOHN PEOPLES OF THIS BOARD HAS BEEN INSTRUMENTAL IN HELPING DRAFT THIS LEGISLATION)

MAYOR JUANITA HELMS OF THE NORTH STAR BOROUGH

MAYOR DOROTHY JONES OF THE MAT-SU BOUROUGH

MR. DAVID HEDBURG, PLANNING DIRECTOR OF THE NORTH STAR BOROUGH

(MR. HEDBURG HELPED DRAFT THE CALIFORNIA "RIGHT TO FARM" BILL. HE HAS SAID THAT THERE IS BROAD SUPPORT FOR SB-409 IN THE FAIRBANKS-NORTH STAR BOROUGH, AND THAT THE ALASKA MUNICIPAL LEAGUE'S POLICY STATEMENTS ARE FAVORABLE TOWARD THE IDEA OF "RIGHT TO FARM" LEGISLATION).

ALASKA FARMERS AND STOCKGROWERS ASSOCIATION

("RIGHT TO FARM" LEGISLATION IS PART OF THEIR 1986 RESOLUTION PLATFORM)

ALASKA HORTICULTURE ASSOCIATION

(THEIR LETTER OF MARCH 6, 1986 STATES, "OUR ASSOCIATION RECOGNIZES THE RAPID DEVELOPMENT OF ALASKAN FARM LANDS INTO HOUSING AREAS AS A VERY REAL THREAT TO THE INDUSTRY. WE MUST PROTECT WHAT FARMING AND HORTICULTURAL EFFORTS AND OPPORTUNITIES WE HAVE TO ASSURE THE POTENTIAL FOR PRODUCTION OF ALASKAN-GROWN FOOD AND PLANT MATERIALS.")

Alaska Horticultural Association

March 6, 1986

Alex Shadura
3/6500 Ste 148
Juneau, AK 99801

RE: SENATE BILL 409

Dear Mr. Shadura:

We are writing to express our strong support for SB 409, the Alaska Right to Farm Act. The Alaska Horticultural Association enthusiastically welcomes the support for farming and horticulture expressed by this Bill and asks your support in assuring its passage through the Senate.

Our Association recognizes the rapid development of Alaskan farm lands into housing areas as a very real threat to the industry. We must protect what farming and horticultural efforts and opportunities we have to assure the potential for production of Alaskan-grown food and plant materials.

We must protect the economic and self-sufficiency advantages farming affords the State of Alaska. Our hard-working farmers and horticulturists deserve consideration and defense.

Very Sincerely Yours,

Steven Shropshire,
AHA President

AG:hr

P.O. Box 1909. Palmer. Alaska 99645

KODIAK LIVESTOCK CO-OP
BOX 1608
KODIAK, AK. 99615

FEBRUARY 10, 1986

JOHN W. PEOPLES
4200 CHENA HOT SPRINGS ROAD
FAIRBANKS, ALASKA 99712

DEAR MR. PEOPLES:

OUR APOLOGIES FOR ANSWERING SO LATE YOUR LETTER OF JANUARY 17, 1986 REQUESTING OUR SUPPORT OF YOUR "RIGHT TO FARM" BILL.

SINCE WE ARE WELL PASSED YOUR REQUIRED DUE DATE OF TWO WEEKS WE WOULD LIKE TO SUGGEST YOU INFORM US OF WHEN YOU WOULD LIKE ADDITIONAL AND INDIVIDUAL LETTERS OF SUPPORT.

WE, THE STOCKGROWERS OF KODIAK, ALASKA DEFINITELY SUPPORT YOUR BILL FOR THE RIGHT TO FARM. WE FEEL THAT FARMING AND AGRICULUTRE IS OF VITAL IMPORTANCE TO ALASKA, ESPECIALLY WHEN WE SEE OTHER INDUSTRIES SUCH AS COMMERCIAL FISHING, DECLINING.

PLEASE KEEP US ADVISED OF YOUR PROGRESS.

SINCERELY,

K M. Burton

K.M. BURTON
SECRETARY

Future Farmers of America is the national organization of students preparing for careers in production agriculture and other agribusiness occupations.

WEST VALLEY FFA
3800 Geist Road
Fairbanks, Alaska 99701

January 29, 1986

Alaska State Legislature

To whom it may concern:

Our FFA Chapter is very much in favor of the bill entitled "Alaska Right To Farm Act." We believe that this bill would help our families and other people in the Fairbanks area maintain our way of life and enhance job opportunities in all fields of agriculture here in interior Alaska.

The purpose and goals of our West Valley FFA Chapter are to:

1. To develop competent rural and agricultural leadership.
2. To create and nurture a love of life.

3. To strengthen the confidence of students of vocational agriculture in themselves and their work.

4. To create more interest in the intelligent choice of farming and other agricultural occupations.

5. To encourage members in the development of individual farming programs and establishment of agricultural.

6. To encourage members to improve the home and its surroundings.

7. To develop character, train for useful citizenship, and foster patriotism.

8. To encourage and practice thrift

9. To encourage improvement in scholarship.

Our 47 FFA Members believe that the "Alaska Right to Farm Act" will further enable us to meet these goals.

Sincerely,

West Valley FFA
West Valley High School

Fairbanks Soil and Water Conservation District
1760 Westwood Way - Fairbanks, Alaska 99701- (907) 479-6767

30 January 1986

John Peoples, President
Interior Farming Association
P.O. Box 83469
College, AK 99708

Dear John,

As you have requested, the board of supervisors of the Fairbanks Soil and Water Conservation District has reviewed the proposed bill titled "Alaska Right to Farm Act". We are agreed as to the need for such legislation in Alaska.

At present, Alaska farmers have no firm legal protection for their activities. Indeed, most present protection is on the form of "grandfather rights", which can be considered tenuous in the face of strong public outcry.

The present trend of encroachment on agricultural land by suburban subdivisions creates an area of conflicting interests. Whenever conflict occurs, the higher population density of the suburban land users can make the outcome a drastically one-sided proposition. There is a definite need for some stronger form of protection for legitimate agricultural land use.

As you are presently enlisting support for the Alaska Right to Farm Act, we grant our permission for you to use this letter as needed to show our active support for this legislation.

Sincerely,

Henry Gettinger, Chairman

Don McKee, Supervisor

Bonita Neiland, Supervisor

absent
William Whipple, Supervisor

Charles D. Goff Jr.
Charles Goff, Supervisor

SOUTH SLOPE GREENHOUSES
22 3 Chena Hot Springs Rd - SR Box 51056
Fairbanks, AK 99701
907-488-6529

ROBERT & JESSICA BITTNER
Owners

Alaska State Legislators

Alaska Right-to-Farm Bill
introduced by the Alaska Soil & water conservation board.

As a citizen of Fairbanks, a truck-farmer & stockgrower, and President of the Tanana Valley Farmer's Market, I would very much encourage the passage of this bill.

Anything that will encourage and protect agricultural production in the state is crucial to our economy.

Sincerely,

Jessica Bittner

Alaska State Legislature

POUCH V
JUNEAU ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

M E M O R A N D U M March 6, 1986

TO: All Members
Senate Resources Committee

FROM: Staff / Senate Resources Committee

RE: SB 409 "An Act relating to the right to farm"

Senate Bill 409 would protect agricultural operations from being declared a nuisance in areas where urban development may come in conflict with agricultural development.

This bill would also provide that state law would take precedent over any municipal ordinance or regulation.

There is no fiscal note.

Enclosures:
Resolution of Ak. Soil & Water Conservation Districts
List of States with Right to Farm Laws
Related Articles

RESOLUTION NO. AASWCD 85-7

SUBJECT OF RESOLUTION Alaska Right-to-Farm Act

SPONSOR OF RESOLUTION Alaska Association of Soil and Water Conservation Districts

DATE OF ORIGIN October 19,1985

WHEREAS, agricultural operations are valuable to the state's economy and the general welfare of the state's people; and

WHEREAS, agricultural operations conducted in developing urban/suburban areas are potentially subject to lawsuits based on the theory of nuisance; and

WHEREAS, these suits may encourage and even force the premature removal of farm land from agricultural use; and

WHEREAS, thirty two states currently have some form of a "Right to Farm" law; and

WHEREAS, it is desirable and in the state's interest to protect reasonable agricultural activities from nuisance suits;

THEREFORE BE IT RESOLVED, that the Legislature of the State of Alaska enact the Alaska Right-To-Farm Act, identified as exhibit I of this resolution.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to:

Governor Bill Sheffield
Members of the Alaska Senate
Members of the Alaska House of Representatives
Commissioner Esther Wunnicke, Alaska Department of Natural Resources
Attorney General Harold Brown

ACTION TAKEN BY AASWCD STANDING COMMITTEE _____

ACTION TAKEN BY AASWCD RESOLUTIONS COMMITTEE _____

ACTION TAKEN BY AASWCD _____

TABLE 5-1
STATES WITH RIGHT-TO-FARM LAWS**

Laws Protecting Against Local Government Regulations

Alabama (1980)	New York* (1971)
Delaware (1980)	North Carolina (1979)
Illinois* (1979)	Oregon (1973)
Kentucky (1980)	Tennessee (1979)
Louisiana (1978)	Virginia* (1977)
Maryland* (1977)	
Minnesota (Twin Cities)* (1980)	

Laws Protecting Against State Regulations

Tennessee (1979)	Oregon* (1973)

Laws Protecting Against Private Nuisance Lawsuits

Alabama (1980)	Mississippi (1980)
Delaware (1980)	North Carolina (1979)
Florida (1979)	Oklahoma (1980)
Georgia (1980)	Tennessee (1979)
Kentucky (1980)	Washington (1979)
Louisiana (1978)	

* The statute applies only in agricultural districts or, in the case of Oregon, in exclusive farm use zones.
** Some states provide more than one form of protection.

and, on the other, the degree to which the ordinance protects the public's health and safety? The statute gives no guidance to assist in this delicate balancing process.

Oregon's law does not extend its protections to farm practices that generate odor, dust, or other materials that interfere with the use of lands outside the exclusive farm use zone. It also contains a specific disclaimer of any intent to limit the powers of all levels of government to protect the public's health, safety, and welfare.

B. Laws Based on North Carolina's Statute

North Carolina's right-to-farm law takes a different approach in that it seeks to modify traditional principles of the common law of nuisance. Some or all of its provisions have been adopted by Alabama, Delaware, Florida, Georgia, and Kentucky and Louisiana. The law provides as follows:

Section 106-700. It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When no agricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this Article to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

Section 106-701. (a) No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any change in conditions in or about the locality thereof after the same has been in operation for more than one year, when such operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

(b) For the purposes of this Article, "agricultural operation" includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances. Pro-

CHRONOLOGY OF STATES WITH

RIGHT-TO-FARM LAWS

1979

ALABAMA
FLORIDA
MASSACHUSETTS
NORTH CAROLINA
TENNESSEE
WASHINGTON

1980

DELAWARE
KENTUCKY
MISSISSIPPI
OKLAHOMA
SOUTH CAROLINA
PILESGROVE TOWNSHIP,N.J.

1981

GEORGIA
NEW JERSEY
ARIZONA
ARKANSAS
CONNECTICUT
IDAHO
ILLINOIS
VIRGINIA
INDIANA
MAINE
MARYLAND
COLORADO
MONTANA
NEW HAMPSHIRE
NORTH DAKOTA
TEXAS
UTAH
VERMONT
OREGON
NEW YORK
MICHIGAN

1982

RHODE ISLAND

OTHER STATES LAWS PASSED
DATE UNKNOWN

NEW MEXICO
CALIFORNIA

PENDING IN LEGISLATIVE
POSSIBLE PASSAGE NOW

OHIO
PENNSYLVANIA
NEVADA
MISSOURI
WISCONSIN
MINNESOTA

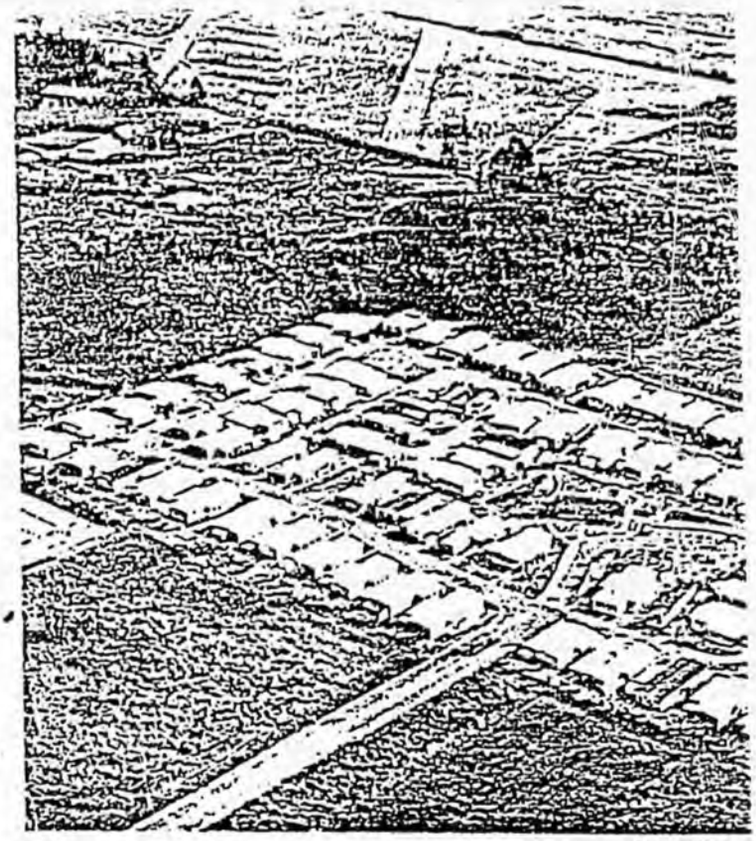
IOWA--HAS PASSED A LIVESTOCK
FEEDLOT NUISANCE LAW

STATES WITHOUT RIGHT-TO-FARM
OR NUISANCE LAWS

LOUISANA
KANSAS
NEBRASKA
ALASKA
HAWAII
WEST VIRGINIA
SOUTH DAKOTA
WYOMING

Right-to-farm laws: Do they resolve land use conflicts?

By Mark B. Lapping, George E. Penfold, and Susan Macpherson



Doug Wilson

UNDERLYING much of the farmland controversy are local land use conflicts between farmers and rural and suburban residents and industrial users. The irony of the situation is obvious: While farming creates and maintains the atmosphere and bucolic landscape so many wish to be part of, it is the business of agriculture, which mandates certain practices and functions, that many find offensive. The result is conflict that prompts nonfarming neighbors to attempt to restrict or eliminate agricultural practices. This often translates itself into a nonfarming majority that employs land use controls to regulate farming or that resorts to nuisance lawsuits to enjoin or restrict certain practices. What many seek, then, is farmland without farms!

About 30 states have "right-to-farm" laws to address these conflicts. Although they vary considerably, all of the laws attempt to do two things. First, they seek to supersede the common law of nuisance. Second, they favor agricultural uses of land above all others. The statutes thus attempt to establish a "first-in-time, first-in-right" logic whereby pre-existing agricultural uses have a primacy against all others. The presumption is this: If a farm constitutes a nuisance, it does so only as neighboring land uses change, and the owners of the neighboring land are themselves responsible for any liabilities to their property or person.

New York the forerunner

The genesis of right-to-farm laws can be found in New York State's pioneering agricultural district law (1971). While providing a means for farmers to create a district to preserve critical masses of farmland, the law also deals with the issue of potentially restrictive controls or lawsuits:

"No local government shall exercise any of its powers to enact local laws or ordinances within an agricultural district in a manner which would unreasonably restrict or regulate farm structures or farming practices in contravention of the purposes of the act unless such restrictions or regulations bear a direct relationship to the public health or safety."

Similar statements occur in the agricultural district laws of Virginia (1977) and Illinois (1979). Maryland's statute (1977) is more specific, noting that the "operation at any time of any machinery used in farm production or the primary processing of agricultural products..." is acceptable so long as farm practices do not "cause bodily injury or directly endanger human health...."

The effectiveness of these sections of state agricultural district laws cannot be easily ascertained. Farmers apparently perceive them to be beneficial because conflict between neighbors is a specific, long-term concern of the farming community (12). This element of the New York law has seldom been used, but its existence may be enough to deter governments and individuals from pressing claims or promulgating restrictive ordinances (3).

North Carolina's statute (1979) has been used as a model for many right-to-farm laws. The purposes of that law are straightforward:

"It is the declared policy of the State to protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many are discouraged from making investments in farm improvements. It is the purpose of this (law) to re-

Mark B. Lapping is professor and director and George E. Penfold is assistant professor, University School of Rural Planning and Development, University of Guelph, Guelph, Ontario, N1G 2W1. Susan Macpherson is a land use analyst, Foodland Preservation Branch, Ontario Ministry of Agriculture and Food, Toronto, Ontario.

duce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed a nuisance."

The law maintains that a nuisance does not exist if three conditions can be established: the farm did not constitute a nuisance at the time of initial operation for at least one year prior to the suit; the claim of nuisance is based upon changing local land uses and does not arise from either negligence or improper operation on the part of the farmer; and the alleged nuisance does not contribute either to flooding or water pollution.

A more sophisticated approach was incorporated into Iowa's livestock feedlot nuisance law. The purpose of this law is to provide specific protection for feedlots from nuisance suits brought by neighbors who establish themselves subsequent to the feedlot's establishment. Section 2 of the act reads:

"In any nuisance action or proceeding against a feedlot brought by or on the benefit of a person whose date of ownership of realty is subsequent to the established date of operation of that feedlot, proof [illegible] three (3) and four (4) of this Act shall be an absolute defense, provided that the conditions or circumstances alleged to constitute a nuisance are subject to regulatory jurisdiction in accordance with either section three (3) or four (4) of this Act."

Compliance with the appropriate sections of the act relate to the Iowa Department of Environmental Quality's water pollution abatement program and relevant local zoning ordinances, where they exist (6). In this way Iowa seeks to guarantee that feedlots will be brought into compliance with overall state environmental objectives and appropriate local land use controls.

The State of Washington's law contains elements of both the standard North Carolina approach and some of the specificity of the Iowa law. But unlike all the other right-to-farm laws, Washington's law seeks to prevent rural land subdivisions that may trigger nuisance-like disputes and actions. Under the Washington statute any agricultural operator who "sells or has sold [illegible] portion of that land contiguous to a farm for residential uses" forfeits the right to qualify for protection under the law. Although the logic of preventing farmers from contributing to the problem through the creation of new lots appears self-evident, no other jurisdiction has enacted such a provision.

Characteristics of right-to-farm laws

State	Type of Agricultural Operation Protected*	Farm Must Predate Other Land Uses	Must Predate by 1 Year Minimum	Supercedes Local Ordinances
Alabama			X	X
Arizona	agricultural operations	X	X	
Connecticut			X	
Delaware			X	
Florida			X	X
Georgia			X	X
Idaho	agricultural operations		X	X
Illinois	farms		X	
Indiana	agricultural operations		X	
Kentucky	agricultural operations		X	X
Maryland	agricultural operations		X	
Massachusetts				X
Michigan	farms, farm operations	X		
Mississippi	agricultural operations		X	
Missouri	agricultural operations		X	
New Hampshire	agricultural operations		X	
New Jersey	commercial farms			X
New Mexico	agricultural operations		X	
New York	agricultural activities	X		
North Carolina			X	X
North Dakota	agricultural operations		X	X
Oklahoma	agricultural activities			
Oregon	farms			X
Rhode Island	agricultural operations			X
South Carolina			X	X
Tennessee		X		
Vermont	agricultural activities	X		
Virginia	agricultural operations		X	X
Washington				
Wisconsin	agricultural practices	X		

*Note: Agricultural operations include farming, processing, and all manner of agriculturally related enterprises; agricultural activities appear to be more farm-related and less food industry-oriented.

The matter of scope

A variety of farming and farm-rela operations are covered under the right farm statutes. In some cases, "farms" ceive protection. In others, "agricultu operations" are covered. Some laws prot food processing and related commerc enterprises. Most of the laws require tl protected agricultural operations pred competing land uses, though a major specify only a minimum of one-year pr operation. Nearly all note that appropri state and federal laws, such as envirc mental regulations, cannot be supersed even though local ordinances that are co trary to agriculture are nullified.

While farms and related operations r ceive protection under these statutes, tl laws almost uniformly require that tl farms and related operations be manag properly. The most common requireme is that farms maintain "good farming pra tices," though these are rarely define Some laws do not cover farm operatio that pollute or "change" water condition are run in a negligent or improper manne or that negatively affect health and safe standards.

Because most right-to-farm laws a relatively new, few have been tested in th courts. An exception is Connecticut statute, which was held valid in *De Capu v. Cella et al* (7, 11). In this case, the judg noted that the "plaintiff came to the nu sance" and that "the total inconvenience.. is relatively small in comparison with th nature and conditioning of defendents' op eration as dairy farmers." Moreover, be cause the farm was operated "in a prope manner," as specified by an inspector fo the state's agricultural department, th plaintiff was "not entitled to an injunc tion" or "an order for monetary damages."

The matter of trespass

Right-to-farm laws are aimed, in the main, to protect farmers against nuisance suits and local ordinances that would make farms nuisances because of changes in neighborhood land uses. Another aspect of the problem, that of trespass, has not been

Conditions not protected under right-to-farm laws.

State	Negligent Management	Improper Management	Water Pollution or Changed Condition	Affects to Health/Safety
Alabama	X	X	X	
Arizona	X			X
Connecticut	X			
Delaware	X	X		
Florida				X
Georgia				
Idaho	X	X		X
Illinois	X	X	X	
Indiana				
Kentucky	X	X	X	
Maryland				
Massachusetts				
Michigan				
Mississippi				
Missouri	X	X	X	
New Hampshire	X	X		X
New Jersey				X
New Mexico	X			
New York				
North Carolina	X	X	X	
North Dakota	X	X	X	
Oklahoma				
Oregon	X			X
Rhode Island	X	X		
South Carolina	X	X	X	
Tennessee				
Vermont				X
Virginia	X	X	X	X
Washington				
Wisconsin				

adequately dealt with in the context of these laws. Historically, trespass requires a physical invasion of property. In recent decades, however, at least 10 jurisdictions have rendered judgments that accord dust, noise, and odors—traditional nuisance externalities—trespass status. As one commentator noted of Oregon's right-to-farm law, "Without protection against trespass, the right-to-farm is virtually ineffective" (*10*).

An evaluation

What, then, are we to make of right-to-farm laws? First, right-to-farm laws are popular with state legislatures and the agricultural community. Even granting the newness of these laws, it is surprising that so few court tests have arisen as a result of their promulgation. This may suggest that these laws are long on rhetoric and short on impact and delivery. Perhaps further court tests are needed (*4*).

Second, whereas most policies in the past were directed toward the solution of certain basic land use issues and problems, right-to-farm laws respond to site-specific concerns and particular agricultural practices.

Third, right-to-farm laws tend to ignore the contemporary practice of nuisance law. Court-inspired remedies are seldom either/or judgments. Instead, they often force the nuisance generator to use technological mitigation techniques to reduce or eliminate externalities so that both parties can carry on their activities with a minimum of economic and spatial disruption. If we follow the practice established by the nonpoint pollution program of the U.S. Department of Agriculture, this is very likely to mean that the costs of mitigation must be absorbed overwhelmingly by farmers. This invariably raises a number of important equity questions, especially given the dubious nature of the types of nuisances involved.

Fourth, an evaluation of right-to-farm laws indicates that many of these legal instruments use vague terminology, are ambiguous, and may be open to due-process challenges. And, as Ed Thompson of the American Farmland Trust has noted, "creative legal draftsmanship by county and township commissions might very easily result in local ordinances which are entirely consistent with 'right-to-farm' laws, but which significantly restrict agricultural operations" (*9*).

For all their weaknesses, however, right-to-farm laws represent an attempt to deal with some of the problems associated with changing land use and community values brought about, in part, by the "counterstream" or return migration to rural areas (*1*). Perhaps not unlike the restoration of some urban neighborhoods, there is more than a trace of class conflict involved in what may be seen as "the gentrification of the countryside." Certainly, this phenomena can be observed in a number of local ordinances and plans that erect barriers against the siting of mobile homes and mobile home parks in many rural regions of the country (*5*). If nothing else, right-to-farm laws attempt to educate a public long separated from the processes of food production.

Perhaps the best solution to these problems was suggested by Noel Perrin in his essay "The Rural Immigration Law." "The solution" to the problems of newcomers with new values who seek to change rural areas is "a good, thorough immigration law. It wouldn't actually keep Don and Sue out, it would just require them to learn rural values before they were allowed to stay" (*8*). Sometimes that which is said in jest may be more astute and appropriate than the laws of the land. In terms of the right to farm, this may indeed prove to be the case.

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STATE RIGHT TO FARM LAWS

Prepared by Richard Taylor, Staff Attorney,
General Counsel's Office

and

Shep Quate, Associate Director, NER Division,
American Farm Bureau Federation
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As urban areas grow and expand into agricultural areas, city dwellers often find the odors, dust, noise, and other incidents of an agricultural operation, to be objectionable. These objections often result in lawsuits against the farmer-neighbor, claiming that the operations of the farm constitute a nuisance.

These law suits are very expensive to defend, time consuming, and are a great source of aggravation and frustration to the farmer, even if he is successful in defending such actions. In an effort to reduce the loss of agricultural resources as a result of these lawsuits, many states have passed "right to farm" laws, which limit the circumstances under which agricultural operations may be deemed to be a nuisance. These "right to farm" laws seem to be of four types.

A. The most popular type of statute provides that a court cannot declare a farming operation a nuisance if it finds the following:

1) that the agricultural operation did not constitute a nuisance at the time it began;

2) that the only basis for the nuisance claim is that conditions have changed in the locality where the farm is located;

3) that the agricultural operation had been in operation for at least one year prior to the filing of the lawsuit;

4) that the alleged nuisance did not result from negligent conduct or improper operation of the agricultural activity, and

5) that the alleged nuisance does not involve water pollution or flooding.

This type of legislation has been passed in the following states:

Alabama
Arkansas
Connecticut
Delaware
Florida
Georgia
Idaho
Illinois
Indiana
Kentucky
Maine
Maryland
Mississippi
Michigan
North Carolina
North Dakota
New Hampshire
New York
Oregon
South Carolina
Texas
Virginia
Utah

B. The second type of "right to farm" statute provides that agricultural activities if, (1) conducted consistently with good agricultural practices and, (2) established prior to the surrounding non-agricultural activities, are presumed to be reasonable and therefore not a nuisance, unless the activity has a substantial adverse effect on the public health and safety.

If the activity conforms with federal, state and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

The main difference between this type of statute and the type described in "Type A" above, is that this type merely raises a presumption of reasonableness as to agricultural activity when certain circumstances exist. In most states, this presumption of reasonableness is rebuttable.

However, the difference between statute type A and type B is more one of form than of substance. If the factors that give rise to the presumption are present, (that is, (1) the activity conforms to federal, state and local regulations and, (2) the activity is prior in time), it would be very difficult to establish a nuisance.

This type of legislation has been passed in the following states.

Arizona
Oklahoma
Vermont
Washington (presumption is conclusive)

The state of Washington amended their Right-to-Farm law in 1981 to protect against government over-regulation.

Their legislative findings read:

"New Section. Sec. 29. The legislature finds that agricultural land is essential to providing citizens with food and fiber and to insuring aesthetic values through the preservation of open spaces in our state. The legislature further finds that government regulations can cause agricultural land to be converted to nonagricultural uses. The legislature intends that agricultural activity consistent with good practices be protected from government over-regulations."

C. The third type of "rights to farm" legislation protects feed lots, dairy farms and egg production houses from liability for private nuisance if, (1) the activity complies with federal and state regulations and if, (2) the agricultural activity started operations before the complainant acquired his property

This approach protects activities of feedlots, dairy farms and egg production houses that are complying with federal and state regulations from private nuisance suits. This approach places the control over these activities in the hands of the state departments of health.

CHAPTER 5

INCENTIVES: RIGHT-TO-FARM LEGISLATION*

I. INTRODUCTION

There is a basic incompatibility between many types of agricultural activity and residential use. As city people begin to move into rural areas, they object to the smells, noises, dust, pesticides, and other by-products of operating a modern farm. These complaints can take several forms. A landowner may sue the farmer, claiming that his farm operations are a nuisance. He may try to persuade the local government to pass an ordinance limiting various farm activities. He may report the farmer to a county or state agency that is responsible for enforcing air or water pollution control laws for the purpose of getting an order to end the offending farm practices.

Farmers find that defending themselves against such actions can be expensive, time-consuming and aggravating, even if they are successful. They have turned with increasing frequency to their state legislators for protection. The laws that have been passed in response have been called "right-to-farm" laws. They recognize that just as new residents in a rapidly urbanizing area should be protected against the unhealthful and offensive odors of a nuisance, such as a large feedlot, that has become "a right thing in the wrong place—like a pig in the parlor, instead of the barn,"[1] so too must farmers in agricultural areas be protected against legal actions by their neighbors and local governments arising from the fact that homes have been built in the wrong places—so that parlors open out on pigpens.

II. PURPOSES AND CHARACTERISTICS OF RIGHT-TO-FARM LEGISLATION

At least seventeen states, listed in Table 5-1, have adopted some form of right-to-farm legislation.[2] They fall into four major groups, each of which is based to a greater or lesser extent on a different prototype.

A. Laws Based on New York's Statute

New York's law was enacted in 1971 and has served as a model for the Illinois, Oregon, Virginia, and the Twin Cities Metropolitan Area legislation. It provides:

> No local government shall exercise any of its powers to enact local laws or ordinances within an agricultural district in a manner which would unreasonably restrict or regulate farm structures or farming practices in contravention of the purposes of the act unless such restrictions or regulations bear a direct relationship to the public health or safety.

As reported in Chapter 4, little explicit use has been made of the law, and there have not been any judicial interpretations of its language. Regulations that restrict farm structures and practices in support of the purposes of the act are permitted, as are regulations of lot size, subdivision, and partitioning that do not restrict farm structures or practices. Regulations that bear a direct relationship to the public health or safety are permitted by the law even though they unreasonably restrict farm structures and practices in contravention to the purposes of the act. (However, it is not clear how a local regulation could be constitutional if it regulates farm structures and practices in an unreasonable way.) Only regulations that protect the public morals or general welfare, such as certain provisions of zoning ordinances, are curtailed by the law, and even then are permissible if the restrictions they impose on farming are reasonable. This is specifically recognized in Virginia's legislation. It is not clear exactly how a farmer would avail himself of the protections provided by the act. Presumably, he could use it in a political way to persuade his local government not to adopt restrictive regulations. If he were unsuccessful in doing so, he might be able either to bring a declaratory judgment action to have the resulting ordinance declared invalid, or to use the law as a legal defense should the local government seek to enforce the ordinance against him. In such an event the judge would have to address the central and most difficult question presented by the act: How will the balance be struck between, on the one hand, the extent to which the ordinance restricts a farming operation in contravention of the purposes of the agricultural districting law

* The principal author of this chapter was John C. Keene.

at the time of commencement of the farm operation, or those in effect [illegible]?

Third, it can be assumed that plaintiffs' lawyers will allege that the agricultural activity is a nuisance for reasons other than changed conditions in the locality. For instance, if they have [illegible] it started, they will attempt to demonstrate that the operation is using different farming techniques, different fertilizers, pesticides, and herbicides, and generally that its technology has evolved over the years so that it is now a nuisance without regard to changed conditions nearby. Thus, much of the protection hoped for will be lost.

Fourth, the statute provides neighbors with a one-year period after the commencement of a farming operation within which to attempt to have it declared a nuisance. The statute does not make it clear, however, whether this same right would be available in the event that a farmer adopts drastically different farming techniques that produce a lot more noise, dust, or other environmental pollution. If this right is not available, then the statute exposes neighbors to serious health risks; if it is available, the law may have the effect of restricting the ability of farmers to improve their farming techniques, and in any case, presents the issue of how much change is necessary before the farmer loses the protection accorded by the law.

Fifth, the North Carolina statute and some of its progeny withhold their protections from agricultural operations that cause injury to others because of "negligent" (Kentucky) or "negligent or improper" (North Carolina, Alabama) conduct. Negligence is a different type of wrong from nuisance and has a completely different legal basis from the one on which nuisance is based, although certain acts may result in liability for both negligence and nuisance. To put it simply, one person can recover damage from another for injuries resulting from negligence if he can prove that the other did not act as a reasonable person would have under all the circumstances. The main part of the statute concerns only nuisance liability and does not attempt to limit liability for damages caused by negligence, so the language concerning negligence is superfluous. Furthermore, it is not clear what the [illegible] by improper. The word has no established legal meaning and could cover all kinds of morally reprehensible actions. Thus, for example, if pesticides were causing a neighbor's family to be sick, he might be able to recover damages from [illegible] though he could not prove negligence. In fact, maintaining a nuisance is a good example of "improper" activity which is not negligent.

Finally, the law extends its protection to agricultural operations even after the land on which they operate has been annexed by a city, if the annexation takes places after the effective date of the act. The legislature made the judgment that even if the land around an agricultural operation becomes so urbanized that it is politically desirable to incorporate it into a city, the protection against municipal regulations based on change of conditions should continue. Such a long-term, universal protection for nuisance-like activities seems not to take into account the varying conditions which will be found across a state.

C. Tennessee's Statute

Tennessee's right-to-farm law is itself derived from feedlot laws that have been enacted in states such as Wyoming and Iowa. It recognizes that air, water, and noise pollution are now governed by complex sets of federal and state regulations, as a result of the enactment of laws such as the federal Clean Air Act, Clean Water Act, the Resources Conservation and Recovery Act, and their state counterparts. The Tennessee statute applies only to feedlots, dairy farms, and egg production houses — agricultural activities that are important to its economy and can generate serious concentrated air and water pollution. It provides that any such activity that is subject to the regulatory jurisdiction of the state department of health is insulated against liability for private nuisance if the activity is in compliance with state regulations and if the agricultural activity started operations before the complaining neighbor bought or started using his property. If the operations are expanded, the original activity maintains its priority date and the new activity receives a priority date as of the time it was established.

The statute also provides limited exemptions from state environmental regulations and local zoning and farm nuisance regulations. Feedlots, dairy farms, and egg production houses must comply first with regulations and standards applicable under a permit from the National Pollutant Discharge Elimination System created by the federal Clean Water Act, second, with regulations of the state Health Department and local governments that were in effect on April 12, 1979, the effective date of the act, and third, with any such regulations that take effect before the agricultural activity is established. The activities are exempt from rules and regulations that are passed after the effective date of the law and the date they began operation. The protected agricultural activities are also exempted from post-1979 zoning and anti-nuisance regulations that become applicable to them because a city has annexed the land on which they are conducted.

Tennessee's approach recognizes that effective control over certain types of agricultural pollution rests in the hands of the state Department of Health. On the one hand it applies a limited first-in-time, first-in-right principle that protects certain activities from changed state regulations. The only issue that this seems to raise is whether the state can permit certain types of pollution that federal laws prohibit. On the other hand, the statute protects agricultural activities that are complying with state rules from most private nuisance suits and hostile local regulations. The law incorporates by reference the detailed environmental standards established by the Department of Health. Operators of the designated agricultural activities must meet them in order to avoid nuisance liability and local regulation.

D. Laws Based on Washington's Statute

The laws of Washington and Oklahoma provide:

> Agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding non-agricultural activities, are [conclusively, in Washington] presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety.
>
> If that activity is undertaken in conformity with federal, state, and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

This approach incorporates by reference all the relevant federal, state, and local standards and insulates farm activities that are meeting them from nuisance liability to property owners who buy land or begin activity after the start of the agricultural activity. Obviously, an operation that was not would be exposed to administrative action as well. It does not attempt to deal with overly restrictive local ordinances. Even though federal and state environmental protection laws have largely supplanted local regulation and established minimum water and air quality standards, it is still possible that local governments may have the power to set standards that could have a serious impact on agricultural activities without providing commensurate protection of the public health and safety. This possibility should be addressed in right-to-farm legislation.

E. Other Approaches

Some states, such as California, have not attempted to create a right to farm but have simply exempted certain types of agricultural activities, such as burning, aerial spraying, and the use of pesticides, from certain requirements of their air pollution control laws.[8] Mississippi's law provides only that an agricultural operation that has been in existence for a year is immune from liability for public or private nuisance if the conditions alleged to constitute a nuisance have existed substantially unchanged since the date the operation started. Expansions are entitled to their own priority date, as is the case in Tennessee.

In a recent proposal for a program for farmland retention in New Jersey,[9] it was suggested that the state should develop specifications of acceptable farm management practice that would both tell farmers what they could do without exposing themselves to liability for environmental pollution or nuisance, and at the same time protect the health and safety of the state's residents.

The proposal stressed that all of the following activities should be covered by right-to-farm legislation: growing crops and raising poultry and cattle; processing and marketing produce; applying fertilizers, pesticides and herbicides; clearing woodlands; installing water and soil conservation facilities; designing farm structures; using water; burning in the open; disposing of organic wastes on the farm; and providing supplies, processing facilities, and markets near farming areas. The report suggested that a special, non-adversary arbitration process be established that would handle complaints about farm nuisance.

III. EFFECTIVENESS

There is, at the time of writing, little evidence bearing on the effectiveness of the various types of right-to-farm legislation. This is at least partly true because much of it has been enacted in the last year and a half. Serious questions of a practical and legal nature arise concerning many of the statutes. Much can be learned from the experience with feedlots, where the environmental problems are severe and the need for protection against local regulation and nuisance suits is great. Tennessee's approach of identifying a small number of particularly onerous or nuisance-like activities and granting them limited protections if they comply with state and federal environmental regulations has much to commend it. It recognizes, as does New Jersey's farmland retention proposal, that to protect farmers against unreasonable environmental regulations and lawsuits, while at the same time protecting the public's health and safety, requires a cooperative public and private effort involving careful data-gathering and analysis, and preparation of a statement establishing balanced state level farm management practices. Conditions will vary from state to state and from one part of a state to another. Clearly it is not an appropriate undertaking for a judge in a private nuisance suit to determine what best management practices are and to balance the needs of farmers against the needs of the non-farm public. Farm organizations and agricultural extension programs must play an important role in developing the kinds of protection that farmers are demanding.

FOOTNOTES-CHAPTER 5

1. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, (1926). See Spur Industries, Inc. v. Del E. Webb Dev. Co., 103 Ariz. 178, 494 P. 2d. 700 (1972).

2. Ala. Code, Section 6-5-127 (Cumm. Supp. 1980); Del. Code tit. 3 Section 1401; Fla. Stat. Ann. Section 823.14 (1980 Supp.); Ga. Laws, 1980 Sess. Act 1297; *Ill. Stat. Ann. ch. 5, Section 1018 (Smith-Hurd Supp. 1980); Ky. Rev. Stat. Ann. ch. 413 (Ky Acts 1980 ch. 214); La. Rev. Stat. Ann. Section 51:1202 (Supp. 1981); *Md. Ann. Code, Agriculture, Section 2-513 (Supp. 1980); *Minn. 1980 Session Laws, ch. 566, Section 473H.12; Miss. Code 95-3-29 (Cumm. Supp. 1980); *N.Y. Agric. & Mkts. Law Section 305(2) (McKinney 1972); N.C. Gen. Stat. Sections 106-700 and 106-701 (Supp. 1979); Okla. Stat. Ann. tit. 50, Section 11 (1980 Session Laws, 2d. Sess., ch. 159); *Ore. Rev. Stat. Section 215.25 (Repl. 1979-80); Tenn. Code Ann. Sections 53-6701, 53-6704 (Supp. 1979); *Va. Code Ann., Section 15.1-1512B (Cumm. Supp. 1980); Wash. Rev. Code, Sections 7.48.300, 7.48.305, and 7.48.310 (Supp. 1980). Several local governments have passed right-to-farm ordinances, and it is possible that other states have too.

* In states marked with an asterisk, the statute applies only to land in agricultural districts or, in the case of Oregon, in exclusive farm-use.

3. See William L. Prosser, *The Law of Torts* (St. Paul, Minn., West Pub. Co., 1971, 4th ed.) p. 571.

4. Spur Industries, Inc. v. Del E. Webb Development Co., 108 Ariz. 178, 494 P. 2d 700 (1972).

5. McQuade v. Tucson Tiller Apts., 25 Ariz. App. 312, 543 P. 2d 150 (1975). See also, *Restatement of Torts, 2d* (St. Paul, Minn., American Law Inst. Publishers, 1979) Sections 821A-840E.

6. See Edward P. Thompson, "Right to Farm Laws Examined," *Agland Exchange*, Nov.-Dec., 1980 (Washington, D.C.: National Association of Counties Research Foundations) for a thoughtful discussion of these laws.

7. The law is taken from the same model as statutes such as those of Wyoming (Wyo. Stat. Ann. ch. 39, Sections 11-39-101 to 11-39-104), and Iowa (Iowa Code Ann. Sections 172D.1 to 172D.4) that apply only to feedlots. They, in turn, build on older feedlot laws such as that of Kansas (Kan. Stat. Ann. Section 47-1505) which provides that feedlots operated in compliance with the statute are deemed not to be nuisances. Parenthetically, the Attorney General of Iowa gave an opinion that a proposed law placing limitations on maintaining nuisance actions against the operation of feedlots was of questionable constitutionality. Iowa Code Ann., Section 172D.1, annotation (Supp. 1980)

8. Cal. Health and Safety Code, Section 41704(b).

9. "Grassroots: An Agriculture Retention and Development Program for New Jersey," N.J. Departments of Agriculture and Environmental Protection (1980).

VIRGINIA COOPERATIVE EXTENSION SERVICE

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VIRGINIA STATE

LAND: ISSUES AND PROBLEMS

No. 63 January 1984*

LOCAL AGRICULTURAL AND FORESTAL DISTRICTS: A LAND PRESERVATION PROGRAM FOR FAIRFAX COUNTY, VIRGINIA

by Janet O. Kilby**

Most people can agree that fresh produce, clean air, woodlands, and wildlife are valuable to a quality environment. The desire to preserve these qualities in Fairfax County, Virginia, is what brought a large turnout to a public hearing by the County's Board of Supervisors on an evening in April of 1980. Citizen after citizen, farmer after farmer, spoke of the farmland preservation benefits that would come to the County if the Board would adopt the land-use tax, an ordinance to give farm and forest owners an opportunity to have their land valued for taxation at its farm and forest value rather than its fair market value. The Board did not act that night, but it did ask the County's planning staff to estimate what a land-use tax program would cost and review alternatives for preserving farm and forest land. From the effort that followed, the County formulated and implemented an agricultural preservation program specifically suited to its needs. On May 9, 1983, the County established, starting on June 30, 1983, a special agricultural and forestal districts program that allows districts as small as 25 acres.

PRESERVATION TECHNIQUES STUDIED

So that the reader may understand why Fairfax County came to focus upon agricultural and forestal districts, a review of the County's 1981 study entitled "Preserving Agriculture and Open Space in Fairfax County" is needed. This study evaluated [illegible]tive land preservation techniques, and the Board of Supervisors used it in deciding what course Fairfax County should pursue[1]. In addition to the land-use tax, the County staff studied agricultural and forestal districts, zoning, fee-simple acquisition, easement acquisition, transfer of development rights, and transfer of development credits.

At the outset, attention focused on use-value taxation, popularly known as the land-use tax, since this technique was known to the public and allowed by state law, Chapter 15 of Title 58, Article 1.1 of the *Code of Virginia*. This law enables local governments to evaluate land for tax purposes in accordance with its use rather than its fair market value. Often, the result is a significant reduction in real estate taxes, and this is thought to assist the landowner in keeping his land in its existing agricultural, horticultural, forest, or open-space use by reducing his operating cost. Actually, the land-use tax should be considered more as a tax-deferral program than a tax-relief program because each landowner who changes his eligible land to a developed use must pay back a portion of the taxes from which he was relieved.

The study determined that if the County adopted a land-use tax ordinance the cost in the first fiscal year, 1983, would be as much as $1.1 million for an ordinance applying only to agricultural and horticultural lands, $6.0 million for one applying only to forest lands, and $7.2 million for a program applying to all four uses including open space. However, cost was not the only concern. Reports from other urbanizing localities in Virginia[2] as well as the agricultural preservation literature, particularly a report by the Council on Environmental Quality, *Untaxing Open Space*, indicated that the implementation of a land-use tax program alone, without any accompanying development controls, was not an effective land preservation technique. In addition, there was concern that the local comprehensive plan and zoning could not be considered in awarding the land-use tax under Article 1.1 of the *Code*, thus allowing the program to work sometimes at cross purposes with the County's other land-use planning and regulation efforts.

The agricultural and forestal district was another preservation technique available to the County through state legislation, Chapter 36 of Title 15.1 of the *Code*. Under this 1977 act, as amended, farm and forest land owners voluntarily may apply to the local governing body to have their land placed in an agricultural and forestal district. Such a district is not a zoning district but a special designation for the land indicating that it is to continue in agricultural and forestal use and that qualifying land can become eligible for the land-use tax. The local governing body may condition its approval of a district to the effect that land in the district cannot be developed to a more intensive use than the existing use while it remains in the district. However, provisions included in the law allow landowners to withdraw their land from districts upon concurrence of the local governing body. Established districts must be recognized by State agencies and local government so that laws, policies, and actions, including securing certain rights-of-way for public utilities, do not conflict with the continuance of farming and forestry in the districts. The local governing body can consider such factors as the agricultural and forestal significance of the land and local development patterns and needs, in deciding whether to establish a district.

The concept of the agricultural and

*Readers seeking to reconcile absence of an issue of this leaflet for the period March 1983 through December 198[illegible] are notified that none [illegible] during that [illegible]-month period. The [illegible] sequence continues consecutively, with the February [illegible] issue being No. 62.

** [illegible] Development Branch, Office of [illegible] County of Fairfax, [illegible]

to the Fairfax County Board than the land-use tax alone since a restriction preventing development could be secured at the same time the district was established and since zoning and the comprehensive plan could be used as factors to determine whether or not a proposed district could be established. However, the 1977 Act was not expected to be very useful in the County because the Act required a 500-acre minimum size. Consequently, since adoption of the Act, only two districts had been successfully established in the County. The owners of smaller farms in Fairfax County were not being benefited.

Other techniques explored in the study, including zoning, fee-simple and easement acquisition, and transfer of development rights and credits, were options that would provide longer-term preservation compared to the land-use tax and agricultural and forestal districts. Zoning techniques and easement acquisition were determined most likely of use to a rapidly-urbanizing county where remaining farms are small and scattered, but considerable time was needed to set up such potentially controversial and expensive programs. Therefore, a more timely solution to the immediate situation of continuing loss of farmland in the County was required; the Fairfax County Board of Supervisors decided to petition the General Assembly to allow establishment of agricultural and forestal districts smaller than 500 acres.

ENABLING LEGISLATION CREATED

Senate Bill 355 was introduced in the 1982 session of the General Assembly. This bill proposed a new law, entitled "Local Agricultural and Forestal Districts Act," which would allow districts as small as 25 acres. A local governing body would have an option to choose a minimum district size larger than 25 acres; however, 25 acres was the smallest acreage that such a body could use. The idea was to allow local governments to adopt small districts that would not require recognition by state agencies. Presumably, the Assembly had chosen 500 acres as a minimum size for a district because farm and forest areas below this size were not considered of sufficient "critical mass" to warrant State recognition. State and local government laws, policies, and right-of-way acquisition policies were not proposed to be [illegible] local agricultural and forestal districts as they are in districts established under the 1977 Act.

Because smaller farms are often pressures are high, and, because these areas often change in short periods of time, Senate Bill 355 specified eight years as the limited effective period for a district. This contrasted sharply with a district being established for an extended [illegible] eight years, as the 1977 law specified. Only upon concurrence of both the owners of land lying within the district and the local governing body could a district be renewed for subsequent periods of eight years each.

Because these districts were strictly of local significance, the bill was enabling legislation, leaving the local governing body to decide whether or not to set up a local districts program.

The proposal review process, using the Agricultural and Forestal District Advisory Committee, the Planning Commission, and the Board of Supervisors, was to be much the same as under the 1977 law. Local districts were to be created by ordinance, the provisions of that ordinance being specified in the bill. These stated that the land could not be developed to a more intensive use than its existing use, that it would be eligible for the land-use tax, and that the district would be for an eight-year period subject to renewal.

Senate Bill 355 allowed a landowner to withdraw his land from a district only if permitted by the local governing body. Upon withdrawal, the land previously in the district would become subject to roll-back taxes and an additional penalty in the amount equal to two times the fair-market-value taxes determined in the year following withdrawal. The penalty for withdrawing from a local district was, therefore, greater than for withdrawing from a statewide district, the latter only making roll-back taxes applicable if use of the land is changed to a nonqualifying use.

The factors that could be considered by the local governing body when deciding to establish a local district include several applicable to districts established under the 1977 Act; for example, the agricultural and forestal significance of lands in and around the district, the nature and extent of land uses other than active farming and forestry in and around the district, and local developmental patterns and needs. The latter factor was further clarified in Senate Bill 355, so that establishment of local districts could include the consideration of the Comprehensive Plan and zoning. Two additional factors for local districts included the scenic and historic features of the land and the environmental benefits [illegible] their existing uses.

When considered by the Assembly, Senate Bill 355 was amended in several important areas. The principal amendment effectively limited the applicability of the law to Fairfax County by defining "local [illegible] governing body of any county having an urban county executive form of government." Therefore, for the present, no other local government can adopt a local agricultural and forestal districts program.

Another important amendment removed the necessity for the local governing body to grant approval of land withdrawal from a district during its eight-year life. As adopted the law allows an owner to withdraw his land upon his request. The roll back tax and penalty provision was allowed to remain as proposed.

The "Local Agricultural and Forestal Districts Act" passed the General Assembly on March 11, 1982, and was signed into law by the Governor on April 10, 1982.

COUNTY ORDINANCE CREATED

The major tasks at hand for the county included setting the minimum district size and development of criteria for evaluating applications, based on the consideration of factors set forth in the law. Recommendations regarding these issues were developed through the efforts of both County staff and a specially-formed committee of citizens and farmers, the Agricultural Planning Advisory Committee, and presented to the County Board of Supervisors in 1983 in the "Agricultural and Forestal Districts Ordinance Report."

While the Local Agricultural and Forestal Districts Act had been designed with Fairfax County in mind and had included provisions that districts could be as small as 25 acres, additional research was needed to see if 25 acres was indeed the best minimum district size for the County. In a 1983 staff report, data on farm and forest acreages were updated. These showed that a majority of the County's farms and forests contained fewer than 100 acres and that many were between 25 and 50 acres. In addition, these farms and forests were scattered, making joint applications for districts made up of land owned by more than one owner difficult. However, there was still the question of whether these scattered small farms could be economically viable.

A study prepared by Rene Johnson, Agriculture Coordinator for the Montgomery County, Maryland, Office of [illegible] Development, determined [illegible] family of

of $24,500 from a 25-acre vegetable and fruit farm. The study concludes that "... opportunity exists for successful family operations on a small acreage." Using this study as well as other sources, Montgomery County chose to base its agricultural preservation program on a minimum [illegible] 25 acres. Since Montgomery County is located adjacent to Fairfax County, and the two counties are subject to some of the same development pressures and economic conditions, the conclusion was that 25 acres would be a reasonable minimum farm size in Fairfax County. This is especially true since intensive fruit and vegetable production is the kind of agriculture most likely to succeed in the County.

The Local Agricultural and Forestal Districts Act does not specify a minimum parcel size or farm size. In other words, under the Act, a district made up of several small farms or forest properties having different ownerships, which together meet the minimum district size, could be allowed. However, the County considered 25 acres the minimum size for a significant farm or forest. The farm or forest may be made up of several tax parcels. However, all the land in the district must be owned either by one owner or by owners who are members of the same immediate family.

The criteria developed for the establishment and review of districts were divided into two groups. The local ordinance provides that all districts should meet all of Criteria Group A and at least two of Criteria Group B. However, an exception can be made to Group A criteria dealing with the proper designation of the land on the Comprehensive Plan if at least three of Criteria Group B are met.

Criteria Group A. To be considered for district status, the land must:

- be a minimum of 25 acres,
- be predominantly agricultural and forestal in use,
- be zoned for residential use with a minimum lot size of two acres,
- be shown on the Comprehensive Plan for development that is no more intense than 2-acre residential lots,
- have surrounding lands planned for similar intensities,
- have at least two-thirds of the soils in agricultural use classified as Class I, II, III, or IV, as defined by the U.S. Soil Conservation Service,
- [illegible] conservation plan prepared by the local Soil Conservation District, and
- [illegible] history of improvements or other evidence of commitment to the present use.

Criteria Group B: The County must consider whether the land:

- is producing farm and/or forest products,
- is providing scenic vistas,
- is an historic site recognized by the County,
- is zoned for five-acre lots or larger,
- is subject to a permanent open-space easement, and
- is being operated so that the farm or forestry operations practice unique or every effective agricultural best management practice.

Several of the criteria in Group A warrant some explanation. While most would agree that lands in the district should be predominantly agricultural and forestal in use, some might question why land in the district may be zoned and planned for residential densities as intense as 0.5 units per acre, or two-acre lots. The reason is that previous planning and zoning action in the County resulted in many farms in the northern part of the County being zoned for two-acre lots. Many of these farms would have been excluded by a more stringent standard. Areas of the County planned and zoned for two-acre lots often have developed in large lots and have a semi-rural flavor. Therefore, Fairfax County chose two-acre-lot planning and zoning as the maximum residential intensity allowed. Criteria dealing with soil quality and conservation plans were intended to promote good conservation practices. These plans must include plans for implementing agricultural best management practices, thereby providing increased environmental benefits from preservation of the land.

Not all farms and forests could meet all of the criterions in Group B. Most working farms and producing forests could meet the first two criterions. The other four criterions allowed unique properties to be preserved, such as an historic farm zoned for low-intensity use but located in an area of the County planned for high-density development, or a parcel of mature forest held by a conservation group for environmental, but not wood production, purposes.

Cost was still a potential issue for the local agricultural and forestal districts program, therefore, efforts were made to estimate what the program might cost the County in terms of revenue loss and administrative costs. The acreage of land calculated. However, the planners realized that the resulting acreage figure could lead to an overestimation of the cost, since all owners of acreage qualifying for the program probably would not apply.

In order to assess their interest in the program, a mail survey was sent in November, 1982, to owners of all potentially eligible farm and forest land in the County. Landowners were asked whether they were interested in participating in the local agricultural and forestal districts program. The survey also sought other information, particularly about what factors influence owners of farm and forest land to continue farming or practicing forestry in the County. A response rate of 45 percent was achieved. The results showed that, among the 250 owners of land qualifying for the program as proposed, 65 were willing to respond that they were interested in participating. This allowed a low and a high estimate of total program costs. The low estimate, representing participation of 4,230 acres, projected a total cost of $349,000 for FY 1984. The high estimate, representing participation of 19,436 acres, projected a total cost of $1,109,000. Estimates were made for FY 1985 because that is the first budget-year that the full effects of the program were expected to impact the County. Actual program costs are expected to be at some level between the low and the high estimate, but probably closer to the low estimate.

IMPLEMENTING THE ORDINANCE

Support for the program was provided by the Agricultural Planning Advisory Committee, and by many citizens and farmers who appeared at public hearings. The Boards of Supervisors adopted the ordinances on May 9, 1983, to become effective on June 30, 1983. The first applications have been submitted and are in the review process. This means that some districts may be established in time to affect tax bills in 1984.

Experience with this new program will indicate whether an appropriate balance has been struck between what is asked of the landowner—that is, what development restrictions are required, and what benefits the landowner receives that will assist him in keeping his farm or forest property. Fairfax County hopes that this new program will at least slow the conversion of its farm and forest land to other uses, allowing maintenance of the availability of local products, clean air, woodlands, and wildlife.

1. Fairfax County Office of Comprehensive Planning. *Preserving Agriculture and Open Space in Fairfax County* (Fairfax, VA: Office of Comprehensive Planning, 1981).
2. *Ibid.*, pp. 50-52.
3. Keene, J. C., D. Berry, R. E. Coughlin, J. Fornam, E. Kelly, T. Plaut, and A. L. Strong. *Untaxing Open Space, Summary* (Washington, D.C.: Council on Environ- [illegible]
4. Sec. 15.[illegible] of the *Code of Virginia*.
5. Fairfax Office of Comprehensive Planning. *Agricultural and Forestal Districts Ordinance Report* (1983).
6. Johnson, R., "Small Farm Economics," *Appendix B, Preliminary Plan, Functional Master Plan for the Preservation of Agricultural and Rural Open Space in Montgomery County* (Silver Spring, MD: Maryland-National Capital Park and Planning Commission, 1980), p. 13.
7. Maryland-National Capital Park and Planning Commission, *Preliminary Plan Functional Master Plan for the Preservation of Agricultural and Rural Open Space in Montgomery County* (Silver Spring, MD), p. 42.

LAND

To a large degree, Fairfax County's local agricultural and forestal districts reflect Virginia's solution to two problems that the New York legislature had to deal with in 1970 when enacting their first agricultural and forestal districts law. Both problems involved the land: one its taxation, the other its protection. The former was a constitutional issue, the latter a philosophic matter.

The constitutional issue arises from wording found in state constitutions, including wording in Article X of the Constitution of Virginia: "All taxes . . . shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax . . . ."

Let's suppose that a state authorizes land-use taxation only for land lying in agricultural and forestal districts that have a minimum of 500 acres. In that state there is a county in which the only operating farms are two dairy farms that lie ten miles apart. One of these farms totals 1,000 acres owned by one family, and the other totals 100 acres owned by another family. The family with the 1,000-acre farm applies to the county for an agricultural and forestal district and, after the review process [illegible] established, making the land qualify for land-use taxation.

The land of the 100-acre farm is devoted to agricultural use, but the acreage does not meet the 500-acre criterion and no adjoining land qualifies to organize a district. As the "authority levying the tax," would this county meet the criterion that "All taxes . . . shall be uniform upon the same class of taxable subjects within the territorial limits" of the county? General agreement exists that the answer is no. The situation posed by the above example was faced by Fairfax County as it sought to respond to its public in 1980.

To solve the uniformity problem, the law enacted in New York provided that an owner of land lying in situations such as the 100-acre dairy farm could contract with the local government to keep his land in the qualifying use for eight years, thereby enabling the land to become eligible for land-use taxation. This feature of the New York law was omitted when the General Assembly of Virginia enacted in 1977 the law enabling local governments to establish agricultural and forestal districts of 500 acres or more.

The 500-acre-minimum district and the (Fairfax County) local agricultural and forestal district (vis-a-vis the contract) reflect major differences in the philosophic position taken to protect and retain qualifying land in agricultural and forestal use.

With the 500-acre-minimum district, the state provides, among others, restraints on public investment by all levels of government. This reduces the pressure on the land and the government makes a commitment to protect and retain the land in agricultural and forestal uses. This is neither an irrevocable nor a "forever" commitment, as the life of each district is subject to periodic review [illegible] establishing such a district with its institutional restraints, government makes a long-term commitment to protect and retain the land in the qualifying uses.

For the local agricultural and forestal district, there is no commitment to protect the land by restraining public investment, a point Ms. Kilby makes in this sentence: "State and local government laws, policies, and right-of-way acquisition policies were not proposed to be restricted in local agricultural and forestal districts as they are in districts established under the 1977 law." Thus, the effect of local agricultural and forestal districts (as with the contract) is to extend land-use taxation to qualifying, eligible land until such time as the County (or, as in Fairfax County, the landowner) may deem it appropriate that the land lying within a district be devoted to developed uses.

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Views and comments of the readers are welcomed and should be addressed to Land: Issues and Problems, Room 323, Hutcheson Hall, Virginia Tech, Blacksburg, VA 24061-0088.

J. Paxton Marshall
Extension Economist
Public Policy

COOPERATIVE EXTENSION SERVICE
U.S. DEPARTMENT OF AGRICULTURE
Virginia Polytechnic Institute
and State University
Blacksburg, Virginia 24061

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

Alabama

S. 79

Enrolled, An Act,

To amend Section 6-5-127 of the Code of Alabama 1975, relating to circumstances under which manufacturing and industrial plants or establishments are not deemed nuisances after operating for one year, so as to include agricultural plants and farming facilities when such businesses come within the same circumstances.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 6-5-127 of the Code of Alabama 1975, is hereby amended to read as follows:

"§ 6-5-127. (a) No agricultural, manufacturing or other industrial plant, or establishment, or any farming operation facility, any of its appurtenances or the operation thereof shall be or become a nuisance, private or public, by any changed conditions in and about the locality thereof after the same has been in operation for more than one year when such plant, facility or establishment, its appurtenances or the operation thereof was not a nuisance at the time the operation thereof began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such plant, establishment, or any farming operation facility, or any of its appurtenances.

"(b) The provisions of subsection (a) of this section shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries or damage sustained by them on account of any pollution of, or change in the condition of, the waters of any stream or on account of any overflow of the lands of any person, firm or corporation.

"(c) Any and all ordinances now or hereafter adopted by any municipal corporation in which such plant is located, operating to make the operation of any such plant, establishment, or any farming operation facility or its appurtenances a nuisance or providing for an abatement thereof as a nuisance in the circumstances set forth in this section are, and shall be, null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such plant, establishment, or any farming operation facility or any of its appurtenances.

"(d) This section shall not be construed to invalidate any [illegible] made, but, insofar as contracts are concerned, is only applicable to contracts and agreements to be made in the future."

Section 2. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

President and Presiding Officer of the Senate

Speaker of the House of Representatives

ISSUED BY
ROSE MOFFORD
SECRETARY OF STATE

House of Representatives
Thirty-fifth Legislature
First Regular Session
1981

CHAPTER 168

HOUSE BILL 2273

AN ACT

RELATING TO AGRICULTURE AND DAIRYING; PROVIDING FOR CERTAIN PROTECTION FROM NUISANCE LAWSUITS AGAINST CERTAIN AGRICULTURAL OPERATIONS; PRESCRIBING DEFINITIONS; PROVIDING FOR CERTAIN PRESUMPTIONS, AND AMENDING TITLE 3, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 9.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Legislative intent

The legislature declares that agricultural operations conducted on farmland in urbanizing areas are often subject to nuisance lawsuits and that the litigation encourages and even forces the premature removal of the land from agricultural uses. In this act, it is the intent of the legislature to ensure that agricultural operations conducted on farmland be adequately protected from nuisance litigation.

Sec. 2. Title 3, Arizona Revised Statutes, is amended by adding chapter 9, to read:

CHAPTER 9

NUISANCE LIABILITY OF AGRICULTURAL OPERATIONS

ARTICLE 1. GENERAL PROVISIONS

3-1051. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AGRICULTURAL OPERATIONS" MEANS ALL ACTIVITIES BY THE OWNER, LESSEE, AGENT, INDEPENDENT CONTRACTOR AND SUPPLIER CONDUCTED ON ANY FACILITY FOR THE PRODUCTION OF CROPS, LIVESTOCK, POULTRY, LIVESTOCK PRODUCTS OR POULTRY PRODUCTS.

2. "FARMLAND" MEANS LAND DEVOTED PRIMARILY TO THE PRODUCTION FOR COMMERCIAL PURPOSES OF LIVESTOCK OR AGRICULTURAL COMMODITIES.

ARTICLE 2. LIMITATION ON NUISANCE SUITS AGAINST AGRICULTURAL OPERATIONS

3-1061. Agricultural operations; nuisance liability

A. AGRICULTURAL OPERATIONS CONDUCTED ON FARMLAND THAT ARE CONSISTENT WITH GOOD AGRICULTURAL PRACTICES AND ESTABLISHED PRIOR TO SURROUNDING NONAGRICULTURAL USES ARE PRESUMED TO BE REASONABLE AND DO NOT CONSTITUTE A NUISANCE UNLESS THE AGRICULTURAL OPERATION HAS A SUBSTANTIAL ADVERSE EFFECT ON THE PUBLIC HEALTH AND SAFETY.

B. AGRICULTURAL OPERATIONS UNDERTAKEN IN CONFORMITY WITH FEDERAL, STATE AND LOCAL LAWS AND REGULATIONS ARE PRESUMED TO BE GOOD AGRICULTURAL [illegible] AND SAFETY.

Approved by the Governor - April 17, 1981

Filed in the Office of the Secretary of State - April 17, 1981

Arizona

State of Arkansas
73rd General Assembly
Regular Session, 1981

Act 301 of 1981

"AN ACT TO CLARIFY THE LAW RELATIVE TO AGRICULTURAL PLANTS AND FACILITIES AND TO LIMIT THE AUTHORITY OF CITIES AND COUNTIES TO DECLARE SUCH PLANTS AND FACILITIES NUISANCES; TO PROMOTE THE ECONOMIC DEVELOPMENT OF THE STATE; TO PROTECT THE PUBLIC HEALTH AND PRESERVE INDIVIDUAL RIGHTS; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Legislative determination and declaration of policy. It is the declared policy of the State to conserve, protect and encourage the development and improvement of its agricultural land and other facilities for the production of food and other agricultural products. When non-agricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm or other agricultural improvements. It is the purpose of this Act to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

SECTION 2. For purposes of this Act the phrase, "agricultural facility" or "facility", shall include, but is not limited to, any plant, facility, structure or establishment used for the feeding, growing, production, holding, processing, storage or distribution, for commercial purposes, of crops, livestock, poultry, swine or fish or products derived from any of them.

SECTION 3. An agricultural facility or its appurtenances or the operation thereof shall not be or become a nuisance, private or public, as a result of any changed conditions in and about the locality thereof after the same has been in operation for a period of one year or more,

when such facility, its appurtenances or the operation thereof was not a nuisance at the time the operation thereof began.

SECTION 4. The provisions of this Act shall not affect or defeat the right of any person, firm or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in the condition of, the waters of any stream or on account of any overflow of the lands of any person, firm or corporation.

SECTION 5. Any and all ordinances now or hereafter adopted by any municipality or county in which such agricultural facility is located, making or having the effect of making the operation of any such agricultural facility or its appurtenances a nuisance or providing for an abatement thereof as a nuisance in the circumstances set forth in this Act are void and shall have no force or effect.

SECTION 6. This Act shall not be construed to invalidate any contracts heretofore made, but, insofar as contracts are concerned shall be applicable only with respect to contracts and agreements made subsequent to the effective date hereof.

SECTION 7. This Act shall not apply to an agricultural facility which materially changes its character of operation or materially increases the size of its physical plant.

SECTION 8. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 9. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 10. It is hereby found and determined by the General Assembly that under certain circumstances an agricultural facility or the operation

thereof may be declared a nuisance as a result of change in conditions in the area around the facility occurring after the facility has been in operation for a long period of time; that to permit any such facility which was not a nuisance when established to be declared a nuisance and and after the facility has been in operation for a long period of time is not only unfair to the owners, operators and employees of such plant but is highly detrimental to the economic growth and development of the State; that this Act is designed to correct this situation and at the same time to protect the public health and preserve individual rights. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

/s/ Lloyd George, et al

3-3-81

APPROVED BY James White
GOVERNOR

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 167

BY AGRICULTURAL AFFAIRS COMMITTEE

AN ACT

RELATING TO THE RIGHT TO FARM; AMENDING TITLE 22, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 45, TITLE 22, IDAHO CODE, TO PROVIDE FOR LEGISLATIVE FINDINGS AND INTENT; TO PROVIDE FOR DEFINITIONS; TO PROVIDE THAT AN AGRICULTURAL OPERATION IS NOT A NUISANCE AND TO PROVIDE FOR AN EXCEPTION; TO PROVIDE FOR INVALIDITY OF LOCAL ORDINANCES AND SUBSTANTIATING PRIOR ACTIONS; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 22, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 45, Title 22, Idaho Code, and to read as follows:

CHAPTER 45
RIGHT TO FARM

22-4501. LEGISLATIVE FINDINGS AND INTENT. The legislature finds that agricultural activities conducted on farmland in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses, and in some cases prohibit investments in agricultural improvements. It is the intent of the legislature to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. The legislature also finds that the right to farm is a natural right and is recognized as a permitted use throughout the state of Idaho.

22-4502. DEFINITIONS. As used in this chapter:

(1) "Agricultural operation" includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the processing for commercial purposes of livestock or agricultural commodities.

(2) "Improper or negligent operation" means that the agricultural operation is not undertaken in conformity with federal, state and local laws and regulations, and adversely affects the public health and safety.

22-4503. AGRICULTURAL OPERATION NOT A NUISANCE -- EXCEPTION. No agricultural operation or an appurtenance to it shall be or become a nuisance, private or public, by any changed conditions in or about the surrounding nonagricultural activities after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began; provided, that the provisions of this section shall not apply whenever a nuisance results from the improper or negligent operation of any agricultural operation or an appurtenance to it.

22-4504. LOCAL ORDINANCES -- PRIOR ACTIONS. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any agricultural operation or an appurtenance to it a nuisance in the circumstances set forth in this chapter are and shall be null and void; provided, however, that the provisions of this section shall not apply whenever a nuisance results from the improper or negligent operation of any agricultural operation or an appurtenance to it. Provided further, that the provisions of this section shall not apply whenever a nuisance results from an agricultural operation located within the corporate limits of any city on the effective date of this chapter, nor shall the provisions of this chapter affect actions commenced prior to the effective date of this chapter.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

AN ACT to protect farming operations from nuisance suits under certain circumstances.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. It is the declared policy of the state to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, farms often become the subject of nuisance suits. As a result, farms are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this Act to reduce the loss to the State of its agricultural resources by limiting the circumstances under which farming operations may be deemed to be a nuisance.

Section 2. The term "farm" as used in this Act means any parcel of land used for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof.

Section 3. No farm or any of its appurtenances shall be or become a private or public nuisance because of any changed conditions in the surrounding area occurring after the farm has been in operation for more than one year, when such farm was not a nuisance at the time it began operation, provided that the provisions of this Section shall not apply whenever a nuisance results from the negligent or improper operation of any farm or its appurtenances.

Section 4. The provisions of Section 3 of this Act shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change

in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

Section 5. Pursuant to paragraph (i) of Section 6 of Article VII of the Illinois Constitution, the General Assembly declares that any ordinances of any home rule unit now in effect or hereafter adopted that would make the operation of any farm or its appurtenances a nuisance or provide for abatement thereof as a nuisance in the circumstance set forth in Section 3 of this Act are and shall be null and void; provided, that the provisions of this Section shall not apply whenever a nuisance results from a farm located within the corporate limits of any city at the time of the effective date of this Act.

Section 6. This Act does not affect actions commenced prior to the effective date of this Act.

Section 7. This Act is effective upon its becoming a law.

PRINTING CODE—The parts in this style type are additions to the text of the existing section of the law. The parts in ~~this style type~~ are deletions from the text of the existing section of the law. The absence of either of the above type styles in an amendatory SECTION indicates that an entirely new section or chapter is to be added to the existing law.

SENATE ENROLLED ACT No. 277

AN ACT to amend IC 34-1-52 concerning nuisances.

April 1981

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-1-52 is amended by adding a NEW section 4 to read as follows: Sec. 4. (a) The general assembly declares that it is the policy of the state to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. The general assembly finds that when nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations, and many persons may be discouraged from making investments in farm improvements. It is the purpose of this section to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

(b) As used in this section, "agricultural operation" includes any facility for the production of crops, livestock, poultry, livestock products, poultry products, or horticultural products or for the growing of timber.

(c) As used in this section, "industrial operation" includes any facility for the manufacture of a product from other products, for the transformation of a material from one (1) form to another, or for the storage or disposition of a product or material.

(d) As used in this section, "locality" means the specific area of land upon which the operation is conducted.

(e) No agricultural or industrial operation or any of its appurtenances shall be or become a nuisance, private or public,

by any changed conditions on the locality thereof after the agricultural or industrial operation, as the case may be, has been in operation continuously on the locality for more than one (1) year, provided:

(1) there is not significant change in the hours of operation;

(2) there is no significant change in the type of operation; and

(3) the operation would not have been a nuisance at the time the agricultural or industrial operation, as the case may be, began on that locality.

(f) This section does not apply whenever a nuisance results from the negligent operation of an agricultural or industrial operation or its appurtenances.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

H. P. 1175 — L. D. 1399

AN ACT to Protect Farmers' Right to Farm.

Be it enacted by the People of the State of Maine, as follows:

17 MRSA § 2805 is enacted to read:

§ 2805. Farms or farm operations not a nuisance

1. Definition. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Farm" means the land, buildings and machinery used in the commercial production of farm products.

B. "Farm operation" means a condition or activity which occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, noise, odors, dust, fumes, operation of machinery and irrigation pumps, ground and aerial seeding, ground spraying, disposal of manure, the application of chemical fertilizers, soil amendments, conditioners and pesticides and the employment and use of labor.

C. "Farm product" means those plants and animals useful to man and includes, but is not limited to forages and sod crops, grains and food crops, dairy products, poultry and poultry products, bees, livestock and livestock products and fruits, berries, vegetables, flowers, seeds, grasses and other similar products.

2. Generally accepted agricultural practices. A farm or farm operation shall not be considered a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural practices, as determined by the Commissioner of Agriculture, Food and Rural Resources in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

3. Change in land use. A farm or farm operation shall not be considered a public or private nuisance if the farm or farm operation existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm and, before the change in land use or occupancy of land, the farm or farm operation would not have been a nuisance.

4. Application. This section shall not affect the application of state and federal statutes.

Maryland

1981

HOUSE OF DELEGATES

11r1030 No. 938 09

By: Delegates L. Riley, Pilchard, Long, and Sauerbrey
Introduced and read first time: February 5, 1981
Assigned to: Environmental Matters

Committee Report: Favorable
House action: Adopted
Read second time: March 23, 1981

CHAPTER _____

AN ACT concerning

Right to Perform Agricultural Operations

FOR the purpose of providing that agricultural operations that have been in operation for 1 year or more may not be or become a public or private nuisance; defining a term; providing exceptions; providing for the prospective effect of this Act; and providing that certain obligations or contracts are not impaired by this Act.

BY adding to

Article - Courts and Judicial Proceedings
Section 5-308
Annotated Code of Maryland
(1980 Replacement Volume and 1980 Supplement)

Preamble

The General Assembly finds that the protection and encouragement of agricultural operations which produce food and other agricultural products is necessary for the maintenance of the public health and welfare and the continued viability of the economy of this State and is a matter of the highest public priority.

Since this State is becoming increasingly urban, farm areas and populations continue to decrease. Often when nonagricultural land uses from urban or suburban development intrude into existing agricultural areas, agricultural operations are threatened by nuisance suits.

It is the purpose of this Act to reduce the loss to the State of its agricultural resources by limiting the

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

circumstances under which agricultural operations may be deemed to be a nuisance; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Courts and Judicial Proceedings

5-308.

(A) IN THIS SECTION, "OPERATION" MEANS A FARM OPERATION FOR THE:

(1) CULTIVATION OF LAND;

(2) PRODUCTION OF AGRICULTURAL CROPS;

(3) RAISING OF POULTRY;

(4) PRODUCTION OF EGGS;

(5) PRODUCTION OF MILK;

(6) PRODUCTION OF FRUIT OR OTHER HORTICULTURAL CROPS; AND

(7) PRODUCTION OF LIVESTOCK.

(B) THIS SECTION DOES NOT APPLY TO:

(1) AN AGRICULTURAL OPERATION THAT DOES NOT CONFORM TO FEDERAL, STATE, OR LOCAL HEALTH OR ZONING REQUIREMENTS;

(2) A FEDERAL, STATE, OR LOCAL AGENCY WHEN ENFORCING AIR, WATER QUALITY, OR OTHER ENVIRONMENTAL STANDARDS UNDER FEDERAL, STATE, OR LOCAL LAW; OR

(3) AN AGRICULTURAL OPERATION THAT IS CONDUCTED IN A NEGLIGENT MANNER.

(C) IF AN AGRICULTURAL OPERATION, INCLUDING ANY CHANGE IN THE OPERATION, HAS BEEN UNDER WAY FOR A PERIOD OF 1 YEAR OR MORE AND IF THE OPERATION OR THE CHANGE DID NOT CONSTITUTE A NUISANCE FROM THE DATE THE OPERATION BEGAN OR THE DATE THE CHANGE IN THE OPERATION BEGAN, IT MAY NOT BE OR BECOME A PUBLIC OR PRIVATE NUISANCE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any event or happening, including contracts and nuisance actions, occurring before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That a presently existing obligation or contract may not be impaired in any way by this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1981.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

STATE OF MICHIGAN

81ST LEGISLATURE

REGULAR SESSION OF 1981

Introduced by Reps. Dodak, Alley, O'Neill, Busch, Gnodtke, Stabenow, Strand, Cropsey, Welborn, Harrington, Giese, Lincoln, Binsfeld, Spaniola, Trim, Hillegonds, Muxlow, Kennedy, Dillingham, Gingrass, Koivisto, Jacobetti, Fitzpatrick, Gilmer, Nick Smith, Hayes, DeGrow, Armbruster, Randall, McCollough, Andrews, Geerlings, Dressel, Stacey, Padden, Ballantine, Vanek, Griffin, Varnum, Nash, Van Singel and Hadden

ENROLLED HOUSE BILL No. 4054

AN ACT to provide for circumstances under which a farm shall not be found to be a public or private nuisance.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "Michigan right to farm act".

Sec. 2. (1) As used in this act, "farm" means the land, buildings, and machinery used in the commercial production of farm products.

(2) As used in this act, "farm operation" means a condition or activity which occurs on a farm in connection with the commercial production of farm products, and includes, but is not limited to: marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.

(3) As used in this act, "farm product" means those plants and animals useful to man and includes but is not limited to: forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products; livestock, including breeding and grazing, fruits, vegetables, flowers, seeds, grasses, trees, fish, apiaries, equine and other similar products; or any other product which incorporates the use of food, feed, fiber or fur.

Sec. 3. (1) A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices according to policy as determined by the director of the department of agriculture.

(2) A farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation existed before a change in the land use or occupancy of land within 1 mile of the boundaries of the farm land, and before such change in land use or occupancy of land, the farm or farm operation would not have been a nuisance.

Sec. 4. This act shall not affect the application of state and federal statutes.

This act is ordered to take immediate effect.

Thomas S. Kinsland

Clerk of the House of Representatives.

William C. Kendler

Secretary of the Senate.

Approved .....

.....

Governor.

HOUSE BILL NO. 331

(As sent to Governor)

AN ACT TO PROVIDE THAT CERTAIN AGRICULTURAL OPERATIONS SHALL BE IMMUNE FROM ACTIONS TO ABATE A NUISANCE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) In any nuisance action, public or private, against an agricultural operation, proof that said agricultural operation has existed for one (1) year or more is an absolute defense to such action, if the conditions or circumstances alleged to constitute a nuisance have existed substantially unchanged since the established date of operation.

(2) The following words and phrases as used in this act shall have the meanings given them in this section:

(a) "Agricultural operation" includes, without limitation, any facility for the production and processing of crops, livestock, farm-raised fish and fish products, livestock products, and poultry or poultry products for commercial or industrial purposes.

(b) "Established date of operation" means the date on which the agricultural operation commenced operation. If the physical facilities of the agricultural operation are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent "established date of operation" established as of the date of commencement of the expanded operation and the commencement of expanded operation shall not divest the agricultural operation of a previously

established date of operation.

(3) This act shall not affect actions commenced prior to July 1, 1980.

SECTION 2. This act shall take effect and be in force from and after July 1, 1980.

NEW JE

5/27/81

RIGHT-TO-FARM ACT

An Act declaring the policy of the State of New Jersey with respect to the rights of a landowner to use his land for agricultural purposes and to apply recognized methods and techniques in connection with the business of agricultural production.

Be it Enacted by the Senate and General Assembly of the State of New Jersey.

1. This act shall be known and may be cited as the "Right-to-Farm Act."

2. The Legislature finds and declares it to be the policy of the State of New Jersey that the owner of land has an inherent right reserved to the people by Article I of the State Constitution, to use the land and improvements thereon for agricultural purposes. "Agricultural purposes" means and includes but is not limited to the production, harvesting, on-farm storage, and the preparation for use, grading, packaging, processing and marketing of crops, plants, animals and other agricultural related commodities useful to man and the use and application of techniques and methods in connection with soil preparation and management, fertilization, weed, disease and pest control, waste disposal, irrigation, drainage and water management, grazing, and harvesting by man, animal or machine developed and approved by the New Jersey Agriculture Experiment Station, another land grant college, a State or Federal soil and water conservation agency, or a recognized private agricultural research organization.

3. This act will take effect immediately.

Statement

This bill would serve as an affirmation by the State of the general "right-to-farm" principles. Having such a statement on record would not only help to restore some confidence to the agricultural community but might also provide additional legal support for farmers in the event of future litigation. It is possible that this propose act will be incorporated into another related bill to increase its effectiveness and the likelihood of its passage.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1979
RATIFIED BILL

CHAPTER 202

HOUSE BILL 481

AN ACT TO PROTECT AGRICULTURAL OPERATIONS FROM NUISANCE SUITS UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is hereby amended by adding a new Article as follows:

"ARTICLE 57.

"Nuisance Liability of Agricultural Operations.

"§ 106-700. Legislative determination and declaration of policy.--It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this Article to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

"§ 106-701. (a) No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year, when such

operation was not a nuisance at the time the operation began; provided, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

(b) For the purposes of this Article, 'agricultural operation' includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products.

(c) The provisions of subsection (a) shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

(d) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances. Provided further, that the provisions shall not apply whenever a nuisance results from an agricultural operation located within the corporate limits of any city at the time of enactment hereof.

(e) This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future."

Sec. 2. This act does not affect actions commenced prior to the effective date hereof.

Sec. 3. If any provisions or clause of this Article or application thereof to any person or circumstances is held invalid such invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 26th day of March, 1979.

JAMES C. GREEN

James C. Green
President of the Senate

CARL J. STEWART, JR.

Carl J. Stewart, Jr.
Speaker of the House of Representatives

North Dakota

NUISANCES

CHAPTER 434

HOUSE BILL NO. 1461
(Dietz, Dotzenrod)

AGRICULTURAL OPERATION NOT A NUISANCE

AN ACT concerning agricultural operations, and providing that no such operation shall be deemed a public or private nuisance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AGRICULTURAL OPERATION - DEEMED NOT NUISANCE.

1. An agricultural operation is not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year, if such operation was not a nuisance at the time the operation began; except that the provisions of this subsection shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation.

2. As used in this Act, "agricultural operation" means the science and art of production of plants and animals useful to man, by a corporation as provided in chapter 10-06, a partnership, or a proprietorship, and including, to a variable extent, the preparation of these products for man's use and their disposal by marketing or otherwise, and shall include horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.

3. The provisions of subsection 1 of this section shall not affect or defeat the right of any person to recover damages for any injury or damage sustained by him on account of any pollution of or change in the condition of the waters of an stream or on account of any overflow of lands of any such person.

4. Any ordinance or resolution of any unit of local government that makes the operation of any agricultural operation a nuisance or provides for the abatement thereof as a nuisance under the circumstances set forth in this section is void; except that the provisions of this subsection shall not apply when a nuisance results from the negligent or improper operation of any such agricultural operation or from an agricultural operation located within the corporate limits of any city as of the effective date of this Act.

5. This section shall not be construed to invalidate any contracts made prior to the enactment of this Act, but, insofar as contracts are concerned, it is only applicable to contracts and agreements to be made on or after the effective date of this Act.

Approved March 15, 1991

Oklahoma

TITLE 50

NUISANCE

CHAPTER 1.—IN GENERAL

Sec.
1.1. Agricultural activities as nuisance [New].

§ 1. Nuisance defined.—A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:

First. Annoys, injures or endangers the comfort, repose, health, or safety of others; or

Second. Offends decency; or

Third. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake or navigable river, stream, canal or basin, or any public park, square, street or highway; or

Fourth. In any way renders other persons insecure in life, or in the use of property, provided, this section shall not apply to preexisting agricultural activities.

Amended by Laws 1980, c. 189, § 1, eff. Oct. 1, 1980.

Section 4 of Laws 1980, c. 189 provides that this act shall become effective October 1, 1980.

Grass fire

Insurance Co. of North America v. Sheinbein, Okl., 488 P.2d 1273 (1971).

Nuisance in general

A "nuisance," public or private, arises where a person uses his own property in such a manner as to cause injury to the property of another. Fairlawn Cemetery Ass'n v. First Presbyterian Church, U. S. A. of Oklahoma City, Okl., 495 P.2d 1185 (1972).

Obscene material

State ex rel. Field v. Hess, Okl., 540 P.2d 1165 (1975).

Oil and gas

Oil and gas lessee had duty to restore surface land not reasonably necessary for purpose of the lease. Tenneco Oil Co. v. Allen, Okl., 515 P.2d 1391 (1973).

§ 1.1. Agricultural activities as nuisance.—A. As defined in this act:

1. "Agricultural activities" shall include, but not be limited to, the growing or raising of horticultural and viticultural crops, berries, poultry, livestock, grain, mint, hay and dairy products; and

2. "Farmland" shall include, but not be limited to, land devoted primarily to production of livestock or agricultural commodities.

B. Agricultural activities conducted on farm or ranch land, if consistent with good agricultural practices and established prior to nearby nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse affect on the public health and safety.

If that agricultural activity is undertaken in conformity with federal, state and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

Added by Laws 1980, c. 189, § 2, eff. Oct. 1, 1980.

Section 3 of Laws 1980, c. 189 provides that this section be classified as § 11 of this title. However, that classification had been previously assigned and section was editorially reclassified to avoid a duplication in numbering.

§ 2. Public nuisance.

Cutting of pipeline as private nuisance

Champlin Petroleum Co. v. Board of County Com'rs of Oklahoma County, Okl., 526 P.2d 1142 (1974).

Mandatory injunction

Ordinarily, where one liable for a nuisance fails to abate it voluntarily, abatement is accomplished through mandatory injunction. Tenneco Oil Co. v. Allen, Okl. 515 P.2d 1391 (1973).

§ 4. Statute authority.

Drainage ditch

City of Bartlesville v. Ambler, Okl., 499 P.2d 433 (1971).

§ 8. Remedies against public nuisance.

Injunction

State ex rel. Field v. Hess, Okl., 540 P.2d 1165 (1975).

Damages

Damage to realty is deemed to be permanent if irreparable or irremediable, or if remedial costs exceed value of the property. Conkin v. Ruth, Okl.App., 581 P.2d 923 (1978).

CHAPTER 2.—SLAUGHTERHOUSES AND CEMETERIES

§ 41. Location of slaughterhouse.—It shall be unlawful for any person to maintain a slaughterhouse within less than one-half mile of any tract of land platted into lots and blocks as an addition to any town or city within the State of Oklahoma, except in conformity with the zoning ordinances of said town or city, or to maintain such a slaughterhouse within one-half mile of any tract of land platted into acre tracts for the purpose of being sold for residence, and in which tracts of land have actually been sold for residence purposes outside of such a town or city.

Amended by Laws 1975, c. 306, § 1.

Texas

RIGHT-TO-FARM ACT

CHAPTER 124

S. B. No. 488

An Act to insure the right to farm by providing limitations on nuisance actions, rules, regulations, and zoning requirements concerning certain agricultural operations; adding Chapter 9A to Title 4, Revised Civil Statutes of Texas, 1925, as amended.

Be it enacted by the Legislature of the State of Texas:

Section 1. Title 4, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding [61] Chapter 9A to read as follows:

"CHAPTER NINE A

"PROTECTION OF AGRICULTURAL OPERATIONS

"Art. 165b—1. Preexisting agricultural operations

"Section 1. Short title: This Act may be cited as the 'Right-to-Farm Act.'

61. Vernon's Ann.Civ.St. art. 165b—1.

"Sec. 2. It is the declared policy of the state to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. It is the purpose of this Act to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be regulated or deemed to be a nuisance.

"Sec. 3. The following words and phrases as used in this Act shall have the meanings given them in this section:

"(1) 'Agricultural operation' includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, planting seed, and for the production of fibers, floriculture, viticulture, and horticulture; raising or keeping livestock or poultry; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure.

"(2) 'Established date of operation' means the date on which the agricultural operation commenced operation. If the physical facilities of the agricultural operation are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent 'established date of operation' established as of the date of commencement of the expanded operation, and the commencement of expanded operation shall not divest the agricultural operation of a previously established date of operation.

"(3) 'Governmental requirement' includes any rules, regulations, ordinances, zoning, or other requirements and restrictions enacted or promulgated by cities, counties, or other municipal corporations who presently have or may in the future be granted the power to enact or promulgate such.

"(4) 'Effective date of the requirement' means the date on which the government requirement requires or attempts to require compliance as to the geographic area encompassed by the agricultural operation.

"(5) The recodification of a municipal ordinance shall not change the original effective date to the extent of the original standards and requirements.

"Sec. 4. (a) No nuisance action shall be brought against an agricultural operation which has lawfully been in operation for one year or more prior to the date of bringing such action, where the conditions or circumstances complained of as constituting the basis for the nuisance action have existed substantially unchanged since the established date of operation; provided, however, that nothing herein shall in any way restrict or impede the authority of this state to protect the public health, safety, and welfare or the authority of a municipality to enforce state law.

"(b) Any person who brings a nuisance action for damages or injunctive relief against an agricultural operation which has existed for one year or more prior to the date that such action is instituted and any person, firm or corporation who violates the provisions of Subsection (a) of Section 4 of this Act shall be liable to the agricultural operator for all costs and expenses incurred in defense of such action, including but not limited to attorney's fees, court costs, travel, and other related incidental expenses incurred in the defense of such litigation.

"(c) The provisions of this section shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any agricultural operation or any portion of an agricultural operation which is conducted in

violation of any federal, state, or local statute or governmental regulation which applies to that agricultural operation or portion thereof.

"Sec. 5. From and after the effective date of this Act, the applicability of governmental requirements shall be as follows:

"(a) A governmental requirement of a political subdivision of the state other than a city:

"(i) shall apply to an agricultural operation with an established date of operation subsequent to the effective date of the requirement;

"(ii) shall not apply to an agricultural operation with an established date of operation prior to the effective date of the requirement;

"(iii) shall apply to an agricultural operation if the governmental requirement was in effect and was applicable to such operation prior to the effective date of this Act.

"(b) A governmental requirement of a city shall not apply to any agricultural operation situated outside the corporate boundaries of such city on the effective date of this Act. If an agricultural operation so situated is subsequently annexed or otherwise brought within the corporate boundaries of the city, the governmental requirements of such city shall not apply unless the requirement is reasonably necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the danger of explosion, flooding, vermin, insects, physical injury, contagious disease, removal of lateral or subjacent support, contamination of water supplies, radiation, storage of toxic materials, discharge of firearms, or traffic hazards. This section shall be construed to maintain to the limited degree set forth herein the previous authority over nonconforming uses, but not to expand such previous authority."

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 16, 1981: Yeas 30, Nays 0; passed the House on May 4, 1981: Yeas 137, Nays 2, two present not voting.

Approved May 13, 1981.

Effective May 13, 1981.

Vermont

AS PASSED BY HOUSE AND SENATE

Vermont

H.345

Introduced by Committee on Agriculture

Subject: Agriculture; nuisance suits; right to farm

Sponsor's statement of purpose: It is the purpose of this bill to protect reasonable agricultural activities conducted on farmland from nuisance lawsuits.

Own Vote			Legislative Vote						
Yes	No		Date	Senate	House	Yes	No	Date	Comments
		1st Reading							
		Committee Report							
		2nd Reading							
		3rd Reading							
		Amended - Calendar							
		Amended - Journal							
		Amended - Journal							
		Committed							
		Recommitted							
		Ordered to lie							
		Called up							
		Passed							
		Messaged							
		Com. of Conference							
		Withdrawn							
		Signed by Governor							

AN ACT TO ADD 12 V.S.A. CHAPTER 95 RELATING TO NUISANCE SUITS AGAINST AGRICULTURAL ACTIVITIES

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 12 V.S.A. chapter 195 is added to read:

CHAPTER 195. NUISANCE SUITS AGAINST AGRICULTURAL ACTIVITIES

§ 5751. LEGISLATIVE FINDINGS AND PURPOSE

The legislature finds that agricultural production is a major contributor to the state's economy; agricultural lands constitute unique and irreplaceable resources of statewide importance; that t contination of agricultural activities preserves the landscape and environmental resources of the state, contributes to the increase of tourism, and furthers the economic self-sufficiency of the people of the state; and that the encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the state. The legislature further finds that agricultural activities conducted on farmland in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance, and that these suits encourage and even force the premature removal of the lands from agricultural use. It is the purpose of this act to protect reasonable agricultural activities conducted on farmland from nuisance lawsuits.

§ 5752. DEFINITIONS

(a) "Agricultural activity" includes, but is not limited to, the growing, raising and production of horticultural and silvacultural crops, grapes, berries, trees, fruit, poultry, livestock, grain, hay, and dairy products.

(b) "Farmland" means land devoted primarily to commercial agricultural activities.

§ 5753. AGRICULTURAL ACTIVITIES; PROTECTION FROM NUISANCE LAWSUITS

(a) Agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding non-agricultural activities, shall be entitled to a rebuttable presumption that the activity ~~is reasonable and~~ does not constitute a nuisance. If an agricultural activity is conducted in conformity with federal, state, and local laws and regulations, it is presumed to be good agricultural practice not adversely affecting the public health and safety. The presumption may be rebutted by a showing that the activity has a substantial adverse effect on the public health and safety.

(b) Nothing in this section shall be construed to limit the authority of state or local boards of health to abate nuisances affecting the public health, as provided in 18 V.S.A. chapter 11.

~~§ 5754. ASSESSMENT OF COSTS~~

In an action against an agricultural activity conducted on farmland based on the theory of nuisance, the court may, upon request of the prevailing party, award to the prevailing party costs as are equitable, including reasonable attorney's fees. As against plaintiff, costs, including reasonable attorney fees, may be awarded when the court finds that the cause of action was frivolous, including reasonable attorney. As against defendant, costs may be awarded when the court finds that defendant failed to take any reasonable action to ~~abate a condition that could have been corrected.~~

Sec. 2. EFFECTIVE DATE

This act shall take effect from passage.

ENGROSSED

HOUSE BILL NO. 1428

House Amendments in [ ] - February 7, 1981

A BILL to amend the Code of Virginia by adding in Title 3.1 a chapter numbered 4.5, consisting of sections numbered 3.1-22.28 and 3.1-22.29, establishing a Right to Farm Act.

Patrons--Councill, Jones, R. B., Slayton, O'Brien, J. W., Green, Dickinson, Lemmon, Campbell, Sanford, Bagley, F. C., Bell, Crouch, Beard, Guest, Parker, Solomon, Quillen, Brickley, Ashworth, and Anderson

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Referred to the Committee on Agriculture

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 3.1 a chapter numbered 4.5, consisting of §§ 3.1-22.28 and 3.1-22.29, as follows:

CHAPTER 4.5.

RIGHT TO FARM ACT.

§ 3.1-22.28. Legislative determination and declaration of policy.--It is the declared policy of the Commonwealth to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this chapter to reduce the loss to the Commonwealth of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance.

§ 3.1-22.29. When agricultural operations do not constitute nuisance by changed conditions in locality.--A. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than one year. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances [or when there has been a significant change in the operation itself].

B. For the purposes of this chapter, "agricultural operation" shall mean any operation devoted to the bona fide production for sale of crops, [or animals, and or] fowl, including but not limited to the production for sale of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and trees in such quantity and so spaced and maintained as to constitute a forest area.

C. The provisions of subsection A shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.

D. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation

circumstance set forth in this section are and shall be null and void; however, the provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances [or when there has been a significant change in the operation itself] .

E. This section shall not be construed to invalidate any contracts heretofore made but insofar as contracts are concerned, it is only applicable to contracts and agreements to be made in the future.

* passed & signed into Law July 1, 1981 effective

Official Use By Clerks	
Passed By	
The House of Delegates	Passed By The Senate
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the House of Delegates	Clerk of the Senate

WASHINGTON

AN ACT Relating to agriculture; adding new sections to chapter 7.48 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. The legislature finds that agricultural activities conducted on farmland in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses. It is therefore the purpose of this act to provide that agricultural activities conducted on farmland be protected from nuisance lawsuits.

NEW SECTION. Sec. 2. There is added to chapter 7.48 RCW a new section to read as follows:

Notwithstanding any other provision of this chapter, agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding nonagricultural activities, are presumed to be reasonable and do not constitute a nuisance unless the activity has a substantial adverse effect on the public health and safety.

If that agricultural activity is undertaken in conformity with federal, state, and local laws and regulations, it is presumed to be good agricultural practice and not adversely affecting the public health and safety.

NEW SECTION. Sec. 3. As used in section 2 of this act:

(1) "Agricultural activity" includes, but is not limited to, the growing or raising of horticultural and viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.

(2) "Farmland" means land devoted primarily to the production, for commercial purposes, of livestock or agricultural commodities.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate February 16, 1979.

John A. Cherberg
President of the Senate

Passed the House March 2, 1979.

Democratic Speaker of the House.

Republican Speaker of the House.

FILED
MAR 20 1979
4:32 P.M.

Approved March 20, 1979

Governor of the State of Washington

NEW SECTION. Sec. 29. The legislature finds that agricultural land is essential to providing citizens with food and fiber and to insuring aesthetic values through the preservation of open spaces in our state. The legislature further finds that government regulations can cause agricultural land to be converted to nonagricultural uses. The legislature intends that agricultural activity consistent with good practices be protected from government over-regulation.

NEW SECTION. Sec. 30. There is added to chapter 70.94 RCW a new section to read as follows:

(1) Odors caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

(2) Any notice of violation issued under this chapter pertaining to odors caused by agricultural activity shall include a statement as to why the activity is inconsistent with

good agricultural practices, or a statement that the odors have substantial adverse effect on public health.

(3) In any appeal to the pollution control hearings board or any judicial appeal, the agency issuing a final order pertaining to odors caused by agricultural activity shall prove the activity is inconsistent with good agricultural practices or that the odors have a substantial adverse impact on public health.

(4) If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.

(5) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.

(b) "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

(c) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities.

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NEW SECTION. Sec. 31. There is added to chapter 90.48 RCW a new section to read as follows:

(1) Prior to issuing a notice of violation related to discharges from agricultural activity on agricultural land, the department shall consider whether an enforcement action would contribute to the conversion of agricultural land to nonagricultural uses. Any enforcement action shall attempt to minimize the possibility of such conversion.

(1) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay and dairy products.

(b) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities.

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