ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

4286 SRES SB 405 - SB 409 1166

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska a· accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

SB
405

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA, 99811
(907) 465-4907

Senate
Committee on Resources

M E M O R A N D U M   March 13, 1986

TO: All Members
Senate Resources Committee

FROM: Staff / Senate Resources Committee

RE: SB 405 "An Act relating to loans under the Alaska grain reserve program; and providing for an effective date"

SB 405 would extend the Alaska Grain Reserve Program. The program was originally funded only for the years 1983 and 1984 because it was anticipated that Alaska farmers would qualify for the federal grain reserve program by 1985. Alaska farmers have not yet met the federal requirements and therefore the Alaska program needs to be extended.

Funds are available within the program to make new loans and additional funding is not needed at this time.

The fiscal note is zero.

Enclosures:
- Memo from Sen. Jack Coghill
- Letter from Department of Natural Resources
- Fiscal note

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4921

Box 55028
North Pole, Alaska 99705
(907) 488-7332

- 1986

March 10, 1986

MEMORANDUM

TO: Senator Arliss Sturgulewski
Senate Resources Committee

FROM: Senator Jack Coghill

RE: SB 405

I have introduced SB 405, a bill that will extend the Alaska Grain Reserve Program through 1987 at the request of the Department of Natural Resources. The original intent in setting up the Grain Reserve was to set up a base so that farmers would be able to participate in the Federal Grain Reserve Program. The oversight in the sunset of the original Grain Reserve made this impossible for all farmers to make the base acreage requirements and the non-standard varieties of barley grown in Alaska do not meet present Federal eligibility requirements No monies will have to be allocated for this program since there are funds available within the program to make new loans.

The Grain Reserve allows Alaskan farmers to market grain in an orderly manner by providing loans to the farmer once the crop is harvested. The farmer can pay planting and harvesting expenses without selling all of the crops at harvest, a time when prices are generally their lowest point for the year. Another reason this is advantageous to the farmer is that with the in state market often times he cannot sell all of the corp at harvest because the market is saturated. As the crop is sold the loan is paid back along with interest computed at 8%.

The program so far has been successful and it does help farmers pay back other loans on time. The grain is graded and inspected. The amount loaned for the grain is based on the grade. For example #2 or better barley could yield a $97.00 per ton loan amount. A lower quality barley would qualify for a lesser amount. Loans are made for a period of up to three years. If after the three year period the loan is not repaid the state will take ownership of any remaining grain.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

March 13, 1986

The Honorable Arliss Sturgulewski
Chair, Senate Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Sturgulewski:

As you may know, the Alaska grain reserve program has been of significant benefit to Alaska's grain farmers. Under this program, farmers use their high quality grain as security for a loan. As the farmer sells his crop, the loan is repaid. A grain reserve program is needed because farmers are not able to sell their entire crops immediately after harvest.

The Alaska grain reserve program was originally funded only for the years 1983-84 because it was anticipated that Alaskan farmers would qualify for the federal program by 1985. Since many farmers have not yet met federal base acreage year requirements, and because the nonstandard varieties of barley grown in Alaska do not meet federal eligibility standards, an Alaska grain reserve program is still necessary.

In 1984 the department recommended, with the Governor's concurrence, that the grain reserve program be extended through 1987 and that it become a revolving fund. When amendments were made to the grain reserve act in 1984, we pointed out the need for these statutory changes. Due to an oversight on our part, however, when requesting amendments we did not specifically ask that crops grown in the years 1985, 1986 and 1987 be eligible for the program.

To correct this oversight, the Department of Natural Resources supports SB 405, which amends the existing statute, AS 3.12.030, to allow grain reserve loans for the 1985, 1986 and 1987 grain crops. Funds are available within the program to make new loans and additional funding is not needed at this time.

We look forward to continuing to work with you to assist Alaska's farmers. If I may provide additional information about the grain reserve program, please let me know.

Sincerely,

Esther C. Wunnicke
Commissioner

cc: Senator Jack Coghill

Bill Heim, Director
Division of Agriculture

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: ________

REQUEST

Bill/Resolution No.: SB 405
Title: Ak Grain Reserve Program

Sponsor: Sen. Coghill
Requestor: Senate Resources Committee
Date of Request: 3/12/86

FISCAL DETAIL

Agency Affected: Natural Resources
BRU: Agricultural Management

Components: Agricultural Revolving Loan Fund

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared by: Carol Wilson [signature] Phone: 465-2400
Division: Commissioner's Office Date: 3/13/86

Approved by Commissioner: [signature] Deputy Date: 3/13/86
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Department of Natural Resources

Loans: Grain Reserve Program

- loans to farmers using grain as collateral
- three-year loan
- 8% interest
- original appropriation (1.65 million) carried over to apply to 1984 crop year, 0.5 appropriated for FY 85

The purpose of the program is threefold:

1. Provides a marketing tool for immediate cash for a product which will be actually sold and utilized over the course of a year;

2. to establish a floor price for grain;

3. to establish a reserve of grain necessary to stimulate expansion of the red meat industry.

RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

2-519 (REV 8/78)

SB

406

Bradley
2/28/86

Original sponsor: Coghill

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 406 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the conservation and protection
7 of natural rangelands; and providing for an effective
8 date."

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

10 * Section 1. AS 41 is amended by adding a new chapter to read:

11 CHAPTER 13. CONSERVATION AND PROTECTION OF NATURAL RANGELANDS.

12 ARTICLE 1. STATE GRAZING PRESERVES.

13 Sec. 41.13.010. PURPOSE. The purpose of this chapter is to
14 protect naturally occurring rangelands and to permit the establishment
15 of state owned or acquired land and water areas as state grazing
16 preserves. The primary purpose in the establishment of state grazing
17 preserves is the perpetuation of personal, commercial, and other
18 beneficial uses of resources through multiple-use management and
19 sustained yield.

20 Sec. 41.13.020. MANAGEMENT PLANS. (a) The commissioner of
21 natural resources shall adopt and may amend management plans to assist
22 in meeting the requirements of this chapter. A management plan pre-
23 pared under this section may designate incompatible uses and shall
24 permit the following uses:

25 (1) grazing permits and leases;

26 (2) timber harvest, including harvest of forest products
27 for personal use;

28 (3) material extraction;

29 (4) mineral location and leasing;

1 (5) oil and gas leases;

2 (6) surface lease, consistent with AS 38.05.070, for uses
3 other than grazing;

4 (7) recreation;

5 (8) wildlife and fisheries habitat management;

6 (9) hunting, fishing, and trapping;

7 (10) watershed management;

8 (11) greenbelts; and

9 (12) other traditional, compatible uses.

10 (b) The commissioner may establish transportation corridors
11 within a state grazing preserve.

12 ARTICLE 2. KODIAK ISLAND STATE GRAZING PRESERVE.

13 Sec. 41.13.100. KODIAK ISLAND STATE GRAZING PRESERVE. Subject
14 to valid existing rights, the state owned or acquired land and water
15 lying within the parcels described in this section is designated as
16 the Kodiak Island State Grazing Preserve.

17 Seward Meridian

18 Township 29 South, Range 19 West

19 Sections 31 - 36

20 Township 29 South, Range 20 West

21 Section 7

22 Sections 12 - 14

23 Sections 19 - 24

24 Sections 25 - 35

25 Township 29 South, Range 21 West

26 Sections 24 - 36

27 Township .9 South, Range 22 West

28 Sections 33 - 36

29 Township 30 South, Range 19 West

1 Township 30 South, Range 20 West
2 Township 30 South, Range 21 West
3 Township 30 South, Range 22 West
4 Township 31 South, Range 19 West
5 Township 31 South, Range 20 West
6 Township 31 South, Range 21 West
7 Township 31 South, Range 22 West
8 Sections 1 - 12
9 Township 32 South, Range 19 West
10 Sections 3 - 6
11 Section 9
12 Township 32 South, Range 20 West
13 Sections 1 - 5
14 Section 9
15 Section 10
16 ARTICLE 3. SEWARD PENINSULA STATE GRAZING PRESERVE.
17 Sec. 41.13.200. SEWARD PENINSULA STATE GRAZING PRESERVE. Sub-
18 ject to valid existing rights, the state owned or acquired land and
19 water lying within the parcels described in this section is designated
20 as the Seward Peninsula State Grazing Preserve.
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5 * Sec. 2. The commissioner shall submit the initial management plan for
6 each state grazing preserve established in this Act no later than the 10th
7 day of the Second Session of the Fifteenth State Legislature. The manage-
8 ment plan takes effect 30 days after the date of its submission unless
9 disapproved by act of the legislature.
10 * Sec. 3. This Act takes effect July 1, 1986.
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RECORDS CERTIFICATION

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James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB
409

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

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

[illegible] OF RESOLUTION [illegible] [illegible]tion of Soil and Water Con[illegible] 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 __________

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

Doug Wilson

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

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

UNDERLYING much of the farm-land 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.

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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-

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 of compliance with sections 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 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		
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-related operations are covered under the right-to-farm statutes. In some cases, "farms" receive protection. In others, "agricultural operations" are covered. Some laws protect food processing and related commercial enterprises. Most of the laws require that protected agricultural operations predate competing land uses, though a majority specify only a minimum of one-year prior operation. Nearly all note that appropriate state and federal laws, such as environmental regulations, cannot be superseded even though local ordinances that are contrary to agriculture are nullified.

While farms and related operations receive protection under these statutes, the laws almost uniformly require that the farms and related operations be managed properly. The most common requirement is that farms maintain "good farming practices," though these are rarely defined. Some laws do not cover farm operations that pollute or "change" water conditions, are run in a negligent or improper manner, or that negatively affect health and safety standards.

Because most right-to-farm laws are relatively new, few have been tested in the courts. An exception is Connecticut's statute, which was held valid in *De Capua v. Cella et al* (*7, 11*). In this case, the judge noted that the "plaintiff came to the nuisance" and that "the total inconvenience... is relatively small in comparison with the nature and conditioning of defendents' operation as dairy farmers." Moreover, because the farm was operated "in a proper manner," as specified by an inspector for the state's agricultural department, the plaintiff was "not entitled to an injunction" 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 pro[illegible]ted 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 such 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

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

The states that have adopted this type of legislation are:

Iowa
Tennessee
Wyoming

D. The fourth type of "right to farm" legislation provides protection from liability for nuisance for a specific agriculture-related problem.

This type of legislature was passed by:

Massachusetts
Montana

The Massachusetts statute reads:

"That the odor from normal maintenance of livestock or the spreading of manure upon agricultural and horticultural lands shall not be deemed to constitute a nuisance."

Montana adds: "if the farming operation has been in operation for one year or more."

The Natural & Environmental Resources Division of the American Farm Bureau Federation with cooperation of the state Farm Bureaus has a complete file of all the Right-to-Farm laws.

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.

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 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 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 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. Pro-

vided 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.

In order to understand the North Carolina approach, it is necessary to know some rudimentary facts about the common law of nuisance.

Nuisance law has been recognized as a confused and confusing area of the law. Still, it is possible to set out some general principles that are widely accepted.[3] First, it is necessary to distinguish between private nuisance and public nuisance. Private nuisance law protects a property owner's right to the use and enjoyment of his land and gives him remedies against someone who interferes improperly with that right. Public nuisance is a crime and involves actions which cause injury to the public on a whole, such as serious air pollution, the storage of explosives in a city, and so forth.[4] Some acts that are private nuisances may affect so many people that they also constitute public nuisances. Even though they have the same name, private and public nuisances rest on distinctly different legal theories.

In determining whether one activity so interferes with another person's activities and enjoyment of his land that it constitutes a private nuisance, a court will determine whether its utility is outweighed by the gravity of the harm it causes. In doing so, the court will consider all the circumstances, including the [illegible] and character of the surroundings, the nature of both activities and the manner in which they are conducted, the value to the community of both activities, the actor's ability to reduce the harm, and the extent to which the actor would be damaged by an injunction and the landowner damaged by the failure to enjoin. The court can also consider priority of use.[5] Whether or not the person causing the alleged nuisance was there first is only one of many considerations that must be weighed. Courts have had to decide whether an activity that was creating significant air pollution or otherwise interfering with the enjoyment of nearby land was to be insulated from liability simply because it was there first or whether, even though at one time it affected few people because of its remoteness, it should now be deemed a nuisance because the growth of an urban area has brought new homes into its vicinity whose owners are being injured by its operations.

The North Carolina right-to-farm law and its progeny attempt to elevate the principle of first-in-time, first-in-right to a position of pre-eminence in the law of nuisance as it affects agricultural operations.[6] The law provides that a court cannot declare a farming operation a nuisance if it finds the following:

1. The agricultural operation was not a nuisance at the time it began,

2. The only basis for the claim that it is a nuisance is that conditions have changed in or about the locality where the farm is located,

3. The agricultural operation had been in operation for at least one year before the lawsuit was brought,

4. The alleged nuisance did not result from negligent or improper operation of the agricultural activity, and

5. The alleged nuisance does not involve water pollution or flooding.

It should be noted that the law applies both to farmers and to producers of livestock and poultry products, such as slaughterhouses.

This law presents several questions to which there are currently no authoritative answers because of the lack of judicial interpretation. First, we should be clear as to the central objective and effect of this law and its progeny: to make it possible for certain farms and food-processing industries that would otherwise be declared to be nuisances because communities have grown up around them, to continue their nuisance-producing activities without interference.

Second, there are several questions arising out of the first requirement above: who has the burden of proving that the farm operation was not a nuisance at the time it began, the neighbor or the farmer? How will he provide it if the operation started ten, twenty, or more years ago? What legal principles will govern, those in effect

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

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 was a nuisance when 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. [illegible]rthermore, it is not clear what the legislators meant 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 the [illegible] even 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 nonagricultural 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., 108 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. 189); •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. Dell 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," *Aglands 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 TECH

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 alternative 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*,[3] 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

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

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

Virginia Cooperative Extension Service programs, activities, and employment opportunities are available to all people regardless of race, color, religion, sex, age, national origin, handicap, or political affiliation. An equal opportunity/affirmative action employer.

[illegible] Service of the Virginia Polytechnic Institute and State University and Virginia State University [illegible] Land-Grant Institutions with U.S. Department of Agriculture and Local Governments [illegible]

to the Fairfax County Board [illegible] 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 [illegible]

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] in local agricultural and forestal districts as they are in districts established under the 1977 [illegible]

Because smaller farms are often [illegible] 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 of preserving lands in the [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."[4] 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."[5]

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 [illegible] 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 [illegible] by Rene Johnson, Agricultural [illegible] Coordinator for the Montgomery County, Maryland, Office of [illegible] Development, determined that a family of

[illegible] 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."[6] 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] to conservation plans prepared by the local Soil Conservation District, and
- show evidence of a 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, [illegible], 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, 68 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 4,280 acres, projected a total cost of $349,000 for FY 1986. The high estimate, representing participation of 19,436 acres, projected a total cost of $1,109,000. Estimates were made for FY 1986 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 landowners, 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 produce, clean air, woodlands, and wildlife.

1. Fairfax County Office of Comprehensive Planning. *Preserving Agriculture [illegible] Open Space in Fairfax County* (Fair[illegible] 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. [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 1,00[illegible] 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.

* * *

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

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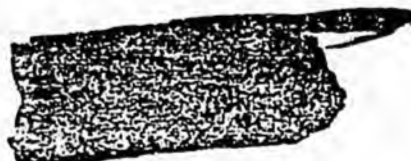

Introduced: 2/13/86
Referred: Resources

1 IN THE SENATE BY KERTTULA

2 SENATE BILL NO. 409

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

8 * Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that

9 (1) agriculture makes an important contribution to the economy

10 of the state;

11 (2) agricultural land constitutes a unique and irreplaceable

12 resource of statewide significance;

13 (3) the continuation of farming preserves the landscape and the

14 environmental resources of the state;

15 (4) agricultural land contributes to tourism;

16 (5) agricultural land furthers the economic self-sufficiency of

17 the people of the state; and

18 (6) the encouragement, development, improvement, and preserva-

19 tion of agriculture will result in a general benefit to the health and

20 welfare of the people of the state.

21 (b) The legislature further finds that conflicts between agricultural

22 operations and the urban and suburban land uses threaten to force the

23 abandonment of agricultural operations and the conversion of agricultural

24 land to nonagricultural uses and the permanent loss of the agricultural

25 land to the economy and to the human and environments of the state.

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

27 Sec. 09.45.235. AGRICULTURAL OPERATIONS AS PRIVATE NUISANCES.

28 (a) An agricultural operation and an operation appurtenant to an

29 agricultural operation is not and does not become a private nuisance

1 by a changed condition that exists on neighboring land if the agricul-
2 tural operation has been in operation for more than one year and if
3 the agricultural operation was not a nuisance at the time the agricul-
4 tural operation began.

5 (b) The provisions of (a) of this section do not apply to a
6 nuisance resulting from improper or negligent conduct of agricultural
7 operations or operations appurtenant to an agricultural operation.

8 (c) The provisions of (a) of this section prevail over a munici-
9 pal ordinance or regulation to the contrary.

CONTENTS OF PACKET

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2. DRAFT COPY OF RIGHT-TO-FARM BILL
3. RESOLUTION--ALASKA STATE SOIL AND WATER CONSERVATION
4. CHRONOLOGY OF STATES WITH RIGHT-TO-FARM BILLS
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   RIGHT-TO-FARM LAWS: DO THEY RESOLVE LAND USE CONFLICTS
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   INCENTIVES: RIGHT-TO-FARM LEGISLATION
8. ARTICLE FROM VIRGINIA COOPERATIVE EXTENSION SERVICE:
   LAND: ISSUES AND PROBLEMS
9. COPY OF RIGHT-TO-FARM BILLS FROM THE FOLLOWING STATES:

1. ALABAMA	11. KENTUCKY	21. NORTH DAKOTA
2. ARIZONA	12. MAINE	22. NORTH CAROLINA
3. ARKANSAS	13. MARYLAND	23. OKLAHOMA
4. CONNECTICUT	14. MASSACHUSETTS	24. SOUTH CAROLINA
5. DELAWARE	15. MICHIGAN	25. TENNESSEE
6. FLORIDA	16. MISSISSIPPI	26. TEXAS
7. GEORGIA	17. MONTANA	27. UTAH
8. IDAHO	18. NEW HAMPSHIRE	28. VERMONT
9. ILLINOIS	19. NEW JERSEY	29. VIRGINIA
10. INDIANA	20. NEW YORK	30. WASHINGTON

10. COPY OF BILL FOR PILESGROVE TOWNSHIP, NEW JERSEY

SENATOR JALMAR KERTTULA
ALASKA STATE LEGISLATURE
POUCH V (MS 3100)
JUNEAU, ALASKA 99811

FEBRUARY 3, 1986

DEAR SENATOR KERTTULA,

ENCLOSED IS THE PACKET FOR THE RIGHT-TO-FARM BILL THAT WE DISCUSSED ON THE PHONE. THE ALASKA STATE SOIL AND WATER CONSERVATION BOARD IS THE PRIME AUTHOR OF THE BILL IN THE DRAFT FORM. I HAVE BEEN DOING RESEARCH ON THE BILL FOR THE PAST FOUR YEARS AND HAVE COLLECTED THE OTHER INFORMATION IN THE PACKET. I AM IN THE PROCESS OF GETTING LETTERS OF SUPPORT FOR THE BILL FROM DIFFERENT ORGANIZATIONS AND AGENCIES. THESE I WILL FORWARD JUST AS SOON AS I CAN GET THEM READY. I AM SENDING A COPY OF THIS PACKET TO THE GOVERNOR AND ESTHER WUNNICKE ASKING FOR THEIR SUPPORT FOR THE BILL.

IF I CAN BE OF ANY FURTHER ASSISTANCE IN GETTING THIS BILL PASSED BY ALL MEANS CONTACT ME. YOU CAN CALL ME DURING THE DAY AT WORK AT 474-7617 EXT 33: 8 AM TO 4:30 PM OR LATER IN THE EVENING AT HOME: 488-6292: A PARTY LINE. IF I HAPPEN TO NOT BE IN LEAVE A MESSAGE AND I WILL GET BACK TO YOU. MY MAILING ADDRESS IS 4200 CHENA HOT SPRINGS ROAD, FAIRBANKS, ALASKA 99712.

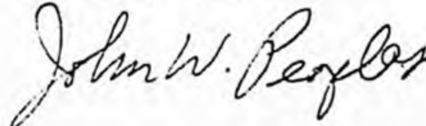
THANKS FOR YOUR TIME AND CONSIDERATION.

WITH HOPES FOR A BETTER AGRICULTURAL FUTURE FOR ALASKA.

THANKS,

ATT:JOYCE

JOHN W. PEOPLES



IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

FOR AN ACT ENTITLED: "ALASKA RIGHT TO FARM ACT."

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

Section 1. AS 09.45 is amended by adding a new section to read:

Sec 09.45.230 (a) The Legislature finds that agriculture is an important contributor to the economy of the state: that agricultural lands constitute unique and irreplaceable resources of statewide importance: that the continuation of agricultural operations 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 conflicts between agricultural operations and urban/suburban land uses threaten to force the abandonment of agricultural operations and the conversion of agricultural lands to non-agricultural uses. whereby these agricultural lands are permanently lost to the economy and the human and physical environments of the state.

(b) 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 non-agricultural activities after the agricultural operation has been in operation for more than one year, when the agricultural operation was not a nuisance at the time the agricultural operation began: provided, that the provisions of this section shall not apply whenever a nuisance results

from improper or negligent operation of any agricultural operation or appurtenance to it.

(c) This section shall prevail over any contrary provision of any ordinance or regulation of any political subdivision of the state.

(d) "Agricultural operation" as used in this section means:

(1) any land and/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, 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: forestry or lumbering operations: and the marketing or selling at wholesale or retail or in any manner any products from the farm.

alabama

S. 79

By: Messrs. St. John and Pine

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:

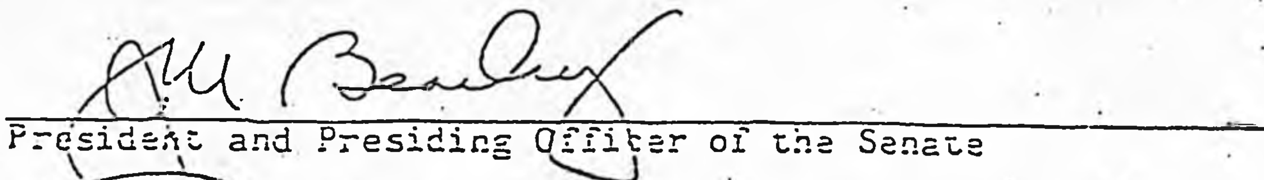
"§ 6-5-127. (a) No agricultural, manufacturing or other industrial plant, or establishment, or any farming operation facility, any of its appurtenances or the operation thereof shall be or become a nuisance, private or public, by any changed conditions in and about the locality thereof after the same 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.

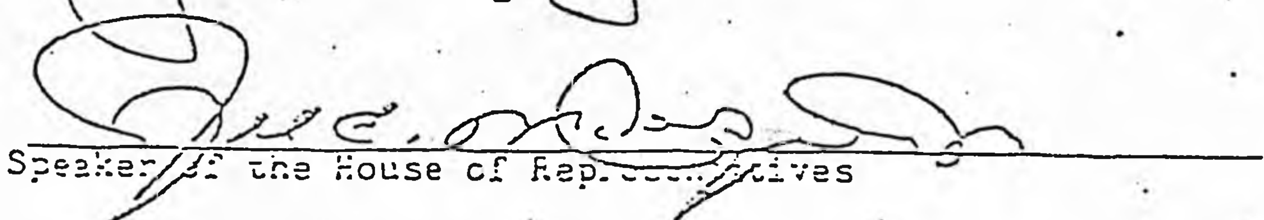
"(c) Any and all ordinances now or hereafter adopted by any municipal corporation in which such plant is located, operating to make the operation of any such plant, establishment, or any farming operation facility or its appurtenances a nuisance or providing for an abatement thereof as a nuisance in 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 contracts heretofore 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

State of Arizona
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.

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Legislative intent
3 The legislature declares that agricultural operations conducted on
4 farmland in urbanizing areas are often subject to nuisance lawsuits and
5 that the litigation encourages and even forces the premature removal of the
6 land from agricultural uses. In this act, it is the intent of the
7 legislature to ensure that agricultural operations conducted on farmland
8 be adequately protected from nuisance litigation.
9 Sec. 2. Title 3, Arizona Revised Statutes, is amended by adding
10 chapter 9, to read:
11 CHAPTER 9
12 NUISANCE LIABILITY OF AGRICULTURAL OPERATIONS
13 ARTICLE 1. GENERAL PROVISIONS
14 3-1051. Definitions
15 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:
16 1. "AGRICULTURAL OPERATIONS" MEANS ALL ACTIVITIES BY THE OWNER,
17 LESSEE, AGENT, INDEPENDENT CONTRACTOR AND SUPPLIER CONDUCTED ON ANY
18 FACILITY FOR THE PRODUCTION OF CROPS, LIVESTOCK, POULTRY, LIVESTOCK
19 PRODUCTS OR POULTRY PRODUCTS.
20 2. "FARMLAND" MEANS LAND DEVOTED PRIMARILY TO THE PRODUCTION FOR
21 COMMERCIAL PURPOSES OF LIVESTOCK OR AGRICULTURAL COMMODITIES.
22 ARTICLE 2. LIMITATION ON NUISANCE SUITS
23 AGAINST AGRICULTURAL OPERATIONS
24 3-1061. Agricultural operations; nuisance liability
25 A. AGRICULTURAL OPERATIONS CONDUCTED ON FARMLAND THAT ARE
26 CONSISTENT WITH GOOD AGRICULTURAL PRACTICES AND ESTABLISHED PRIOR TO
27 SURROUNDING NONAGRICULTURAL USES ARE PRESUMED TO BE REASONABLE AND DO NOT
28 CONSTITUTE A NUISANCE UNLESS THE AGRICULTURAL OPERATION HAS A SUBSTANTIAL
29 ADVERSE EFFECT ON THE PUBLIC HEALTH AND SAFETY.

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

Approved by the Governor - April 17, 1981

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

Arizona

Act 301 of 1981

FARM BUREAU LEGISLATIVE DEPARTMENT

1 "AN ACT TO CLARIFY THE LAW RELATIVE TO AGRICULTURAL PLANTS
2 AND FACILITIES AND TO LIMIT THE AUTHORITY OF CITIES AND
3 COUNTIES TO DECLARE SUCH PLANTS AND FACILITIES NUISANCES;
4 TO PROMOTE THE ECONOMIC DEVELOPMENT OF THE STATE; TO
5 PROTECT THE PUBLIC HEALTH AND PRESERVE INDIVIDUAL RIGHTS;
6 AND FOR OTHER PURPOSES."
7
8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
9
10 SECTION 1. Legislative determination and declaration of policy. It
11 is the declared policy of the State to conserve, protect and encourage the
12 development and improvement of its agricultural land and other facilities
13 for the production of food and other agricultural products. When non-
14 agricultural land uses extend into agricultural areas, agricultural
15 operations often become the subject of nuisance suits. As a result,
16 agricultural operations are sometimes forced to cease operations. Many
17 others are discouraged from making investments in farm or other agricultural
18 improvements. It is the purpose of this Act to reduce the loss to the
19 State of its agricultural resources by limiting the circumstances under
20 which agricultural operations may be deemed to be a nuisance.
21
22 SECTION 2. For purposes of this Act the phrase, "agricultural
23 facility" or "facility", shall include, but is not limited to, any plant,
24 facility, structure or establishment used for the feeding, growing,
25 production, holding, processing, storage or distribution, for commercial
26 purposes, of crops, livestock, poultry, swine or fish or products derived
27 from any of them.
28
29 SECTION 3. An agricultural facility or its appurtenances or the
30 operation thereof shall not be or become a nuisance, private or public,
31 as a result of any changed conditions in and about the locality thereof
32 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

1 thereof may be declared a nuisance as a result of change in conditions
2 in the area around the facility occurring after the facility has been in
3 operation for a long period of time; that to permit any such facility
4 which was not a nuisance when established to be declared a nuisance and
5 [illegible]
6 and after the facility has been in operation for a long period of time
7 is not only unfair to the owners, operators and employees of such plant
8 but is highly detrimental to the economic growth and development of the
9 State; that this Act is designed to correct this situation and at the
10 same time to protect the public health and preserve individual rights.
11 Therefore, an emergency is hereby declared to exist and this Act being
12 necessary for the immediate preservation of the public peace, health and
13 safety shall be in full force and effect from and after its passage and
14 approval.
15
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18
19 */s/ Lloyd George, et al*
20
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23 3-3-81
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25 APPROVED BY [signature]
26 GOVERNOR
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Connecticut

JUN 25 1981

Substitute House Bill No. 5092

PUBLIC ACT NO. 81-226

AN ACT CONCERNING THE RIGHT TO FARM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (a) Notwithstanding any general statute or municipal ordinance or regulation pertaining to nuisances to the contrary, no agricultural or farming operation, place, establishment or facility, or any of its appurtenances, or the operation thereof, shall be deemed to constitute a nuisance, either public or private, due to alleged objectionable (1) odor from livestock, manure, fertilizer or feed, (2) noise from livestock or farm equipment used in normal, generally acceptable farming procedures, (3) dust created during plowing or cultivation operations, (4) use of chemicals, provided such chemicals and the method of their application conform to practices approved by the commissioner of environmental protection or, where applicable, the commissioner of health services, or (5) water pollution from livestock or crop production activities, except the pollution of public or private drinking water supplies, provided such activities conform to acceptable management practices for pollution control approved by the commissioner of environmental protection; provided such agricultural or farming operation, place, establishment or facility has been in operation for one year or more and has not been substantially changed, and such operation follows generally accepted agricultural practices. Inspection and approval of the agricultural or farming operation, place, establishment or facility by the commissioner of agriculture or his designee shall be prima facie evidence that such operation follows generally accepted agricultural practices.

(b) The provisions of this section shall not apply whenever a nuisance results from negligence or wilful or reckless misconduct in the operation of any such agricultural or farming operation, place, establishment or facility, or any of its appurtenances.

SPONSOR: Sen. Adams

DELAWARE STATE SENATE

130TH GENERAL ASSEMBLY

SENATE BILL NO. 490 APR 1 1980

AN ACT TO AMEND TITLE 3, DELAWARE CODE RELATING TO AGRICULTURE AND FORESTAL OPERATIONS NOT BEING CONSIDERED NUISANCES.

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

1 Section 1. Amend Title 3, Delaware Code, by establishing a new Chapter to be
2 designated as Chapter 14 to read as follows:

3 "CHAPTER 14. AGRICULTURE AND FORESTAL NUISANCES

4 §1401. Agricultural and Forestal Operations not Nuisances

5 No agricultural or forestal operation within this State which has been in
6 operation for a period of more than one (1) year shall be considered a nuisance,
7 either public or private, as the result of a changed condition in or about the
8 locality where such agricultural or forestal operation is located. The provisions of
9 this Section shall not apply when the nuisance is determined to exist as the result
10 of the negligent or improper operation of any agricultural or forestal operation or
11 when such operation is being operated in violation of State or Federal law or any
12 local or county ordinance."

SYNOPSIS

Wherein a changed condition has occurred where a agricultural or forestal operation is located no nuisance suit can be brought if the agricultural or forestal operation has been located in the area for a period of more than one year. The provision does not prohibit nuisance suits being brought against such operations where there is negligence or improper operation of such facilities nor does it prohibit nuisance suits being brought against such operations when such operation is violating state, federal or local laws.

Author - Senator Adams

LC:McDTC:MJL
1950A

Florida

Senate Bill No. 148

An act relating to agricultural or farming operations, places, establishments, and facilities; providing that such operations, places, establishments, or facilities shall not be deemed to be a nuisance as a result of changed conditions in or around the locality of such operation, place, establishment, or facility under certain conditions; providing an effective date.

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

Section 1. No commercial agricultural or farming operation, place, establishment, or facility, or any of its appurtenances, or the operation thereof, shall be or shall become a nuisance, as a result of changed conditions in or around the locality of such agricultural or farming operation, place, establishment, or facility, if such agricultural or farming operation, place, establishment, or facility has been in operation for 1 year or more and if it was not a nuisance at the time it began operation. This section, however, shall not apply whenever a nuisance injurious to health, as defined in F. S. 386, results from the operation of any such agricultural or farming operation, place, establishment, or facility, or any of its appurtenances.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 16, 1979.

Filed in Office Secretary of State May 17, 1979.

This public document was promulgated at a base cost of $13.50 per page for 1,500 copies or $.0090 per single page for the purpose of informing the public of Acts passed by the Legislature.

CODING: Words in ~~stricken~~ type are deletions from existing law; words in <u>underscored</u> type are additions.

SENATE BILL 348

By: Senators McGill of the 24th, Foster of the 50th,
Walker of the 19th and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Chapter 72-1, relating to nuisances,
2 as amended, so as to provide that agricultural or farming
3 operations, places, establishments, or facilities shall not
4 be deemed to be a nuisance as a result of changed conditions
5 in or around the locality of such operation, place,
6 establishment, or facility under certain conditions; to
7 repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Code Chapter 72-1, relating to nuisances, as amended, is hereby amended by adding between Code Section 72-101 and Code Section 72-102 a new Code Section 72-101.1 to read as follows:

"72-101.1. Agricultural or farming operations. No agricultural or farming operation, place, establishment, or facility, or any of its appurtenances, or the operation thereof, shall be or shall become a nuisance, either public or private, as a result of changed conditions in or around the locality of such agricultural or farming operation, place, establishment, or facility if such agricultural or farming operation, place, establishment, or facility has been in operation for one year or more and if it was not a nuisance at the time it began operation. This section, however, shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural or farming operation, place, establishment, or facility, or any of its appurtenances."

(over)

1 Section 2. All laws and parts of laws in conflict 56

2 with this Act are hereby repealed. 57

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 167

BY AGRICULTURAL AFFAIRS COMMITTEE

1 AN ACT
2 RELATING TO THE RIGHT TO FARM; AMENDING TITLE 22, IDAHO CODE, BY THE ADDI-
3 TION OF A NEW CHAPTER 45, TITLE 22, IDAHO CODE, TO PROVIDE FOR LEGIS-
4 LATIVE FINDINGS AND INTENT; TO PROVIDE FOR DEFINITIONS; TO PROVIDE THAT
5 AN AGRICULTURAL OPERATION IS NOT A NUISANCE AND TO PROVIDE FOR AN
6 EXCEPTION; TO PROVIDE FOR INVALIDITY OF LOCAL ORDINANCES AND SUBSTAN-
7 TIATING PRIOR ACTIONS; AND DECLARING AN EMERGENCY.

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

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

12 CHAPTER 45
13 RIGHT TO FARM

14 22-4501. LEGISLATIVE FINDINGS AND INTENT. The legislature finds that
15 agricultural activities conducted on farmland in urbanizing areas are often
16 subjected to nuisance lawsuits, and that such suits encourage and even
17 force the premature removal of the lands from agricultural uses, and in
18 some cases prohibit investments in agricultural improvements. It is the
19 intent of the legislature to reduce the loss to the state of its agricul-
20 tural resources by limiting the circumstances under which agricultural
21 operations may be deemed to be a nuisance. The legislature also finds that
22 the right to farm is a natural right and is recognized as a permitted use
23 throughout the state of Idaho.

24 22-4502. DEFINITIONS. As used in this chapter:
25 (1) "Agricultural operation" includes, without limitation, any facil-
26 ity for the growing, raising or production of agricultural, horticultural
27 and viticultural crops and vegetable products of the soil, poultry and
28 poultry products, livestock, field grains, seeds, hay, apiary and dairy
29 products, and the processing for commercial purposes of livestock or agri-
30 cultural commodities.
31 (2) "Improper or negligent operation" means that the agricultural
32 operation is not undertaken in conformity with federal, state and local
33 laws and regulations, and adversely affects the public health and safety.

34 22-4503. AGRICULTURAL OPERATION NOT A NUISANCE -- EXCEPTION. No agri-
35 cultural operation or an appurtenance to it shall be or become a nuisance,
36 private or public, by any changed conditions in or about the surrounding
37 nonagricultural activities after the same has been in operation for more
38 than one (1) year, when the operation was not a nuisance at the time the
39 operation began; provided, that the provisions of this section shall not
40 apply whenever a nuisance results from the improper or negligent operation
41 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.

HOUSE BILL 0385

82nd GENERAL ASSEMBLY

State of Illinois

1981 and 1982

Introduced February 26, 1981, By Representatives Schraeder – Rigney

SYNOPSIS

(New Act)

New Act declaring that farms which have been in operation for more than one year shall not be or become a nuisance because of changes in the surrounding area, if the farm was not a nuisance when it began operation. Effective immediately.

LRB8202546SCjw

14

A BILL FOR

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

1 in condition of, the waters of any stream or on the account 93
2 of any overflow of lands of any such person, firm, or 94
3 corporation.
4 Section 5. Pursuant to paragraph (i) of Section 6 of 96
5 Article VII of the Illinois Constitution, the General 97
6 Assembly declares that any ordinances of any home rule unit 98
7 now in effect or hereafter adopted that would make the 99
8 operation of any farm or its appurtenances a nuisance or
9 provide for abatement thereof as a nuisance in the 100
10 circumstance set forth in Section 3 of this Act are and 101
11 shall be null and void; provided, that the provisions of this 102
12 Section shall not apply whenever a nuisance results from a 103
13 farm located within the corporate limits of any city at the
14 time of the effective date of this Act. 104
15 Section 6. This Act does not affect actions commenced 106
16 prior to the effective date of this Act. 107
17 Section 7. This Act is effective upon its becoming a 109
18 law. 111

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.

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.

GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

REGULAR SESSION 1980

House Bill No. 909

March 19, 1980

The following bill was reported to the Senate from the House and ordered to be printed.

AN ACT relating to protecting agricultural operations from nuisance suits under certain circumstances.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 SECTION 1. A NEW SECTION OF KRS CHAPTER 413 IS
2 CREATED TO READ AS FOLLOWS:
3 (1) It is the declared policy of the Commonwealth
4 to conserve and protect and encourage the development and
5 improvement of its agricultural land for the production
6 of food and other agricultural products. When
7 nonagricultural land uses extend into agricultural areas,
8 agricultural operations often become the subject of nui-
9 sance suits. As a result, agricultural operations are
10 sometimes forced to cease operations. Many others are
11 discouraged from making investments in farm improvements.
12 It is the purpose of this section to reduce the loss to
13 the state of its agricultural resources by limiting the
14 circumstances under which agricultural operations may be
15 deemed to be a nuisance.
16 (2) No agricultural operation or any of its appur-
17 tenances shall be or become a nuisance, private or
18 public, by any changed conditions in or about the local-
19 ity thereof after the same has been in operation for more
20 than one year, when such operation was not alleged to be a nuisance at

Within such time

1 the time the operation began; provided, that the provi-
2 sions of this subsection shall not apply whenever a nui-
3 sance results from the negligent operation of any such
4 agricultural operation or its appurtenances.

5 (3) For the purposes of this section "agricultural
6 operation" includes, without limitation, any facility for
7 the production of crops, livestock, poultry, livestock
8 products, or poultry products including horticultural and
9 growing of timber.

10 (4) The provisions of subsection (1) of this
11 section shall not affect the right of any person, firm,
12 or corporation to recover damages for any injuries or
13 damages sustained by them on account of pollution of the
14 waters of any stream of any such person, firm, or corpo-
15 ration.

16 (5) Any and all ordinances of any unit of local
17 government now in effect or hereafter adopted that would
18 make the operation of any such agricultural operation or
19 its appurtenances a nuisance or providing for abatement
20 thereof as a nuisance in the circumstance ~~set forth in~~
21 ~~this~~ section ~~are and~~ shall be null and void; provided,
22 however, that the provisions of this subsection shall not
23 apply whenever a nuisance results from the negligent
24 operation of any such agricultural operation or any of
25 its appurtenances.

26 Section 2. This Act does not affect actions com-

1 menced prior to the effective date hereof.

JUN 19 '81
BY GOVERNOR

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. R[illegible], 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

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. 132 133

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1981. 137

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.