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AMEND RIGHT-TO-FARM ACT

Senate Bill 534 (Substitute S-2) with House committee amendments
First Analysis (12-1-87)

Sponsor: Sen. Nick Smith
Senate Committee: Agriculture and Forestry
House Committee: Agriculture and Forestry

THE APPARENT PROBLEM:

The Farmland and Open Space Preservation Act (Public Act 116 of 1974) was intended to protect farmland from encroaching suburban development, while the Right to Farm Act (Public Act 93 of 1981) was a complementary measure designed to protect farming operations from nuisance suits brought against farmers by new rural residents unused to the noise, odors, and dust that accompany typical farming activities. The Right to Farm Act says that a farm or farm operation cannot be declared a public or private nuisance if either (a) it conforms to generally accepted agricultural and management practices (as determined by the director of the Department of Agriculture) or (b) it existed before any nearby (within one mile) development and would not have been a nuisance before the development occurred. ("Nuisance" is defined as any activity which annoys, harms, inconveniences, or damages other people, and nuisance suits are brought when someone's activities take away from the use and enjoyment of another's property.)

Although the Right to Farm Act apparently did reduce the number of nuisance suits attributable to urban and suburban migration into rural areas for residential purposes, lawsuits against farmers have not been eliminated. This is because the growth in rural populations unfamiliar with normal farming has not been the only factor in the increase in nuisance suits. The other major factor, the trend in agriculture from small, often family-owned farms to large, investor-owned incorporated operations — particularly in the livestock industry — has also resulted in lawsuits, often brought by long-term rural residents either familiar with or themselves engaged in smaller farming operations.

Intensive livestock operations, with the enormous amounts of animal wastes (and odors) generated by their large concentrations of animals in relatively small areas, have sparked some of the most bitter disputes between rural residents, whether new or long-term, and the agricultural industry. In particular, animal odors associated with intensive hog operations (sometimes known as "hog hotels") have occasioned an increasing number of complaints by rural residents over the past several years.

Although the Right to Farm Act protects farms following "generally accepted agricultural and management practices," the director of the Michigan Department of Agriculture never defined these practices. As a result, a number of lawsuits have been brought against farming operations (either under the Right to Farm Act or under one of the state anti-pollution statutes) and the courts have been deciding on a case by case basis what are and are not "acceptable" agricultural practices.

In September of 1986, the Michigan Department of Agriculture (MDA) organized an Animal Waste Resource Committee to examine the livestock waste management problems in the state. In August, 1987, the committee issued a preliminary report which recommended changes in certain state laws, including the Right to Farm Act.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Right to Farm Act to require the State Agriculture Commission, instead of the director of the Department of Agriculture, to define "generally accepted agricultural and management practices." Those practices would have to be reviewed annually by the commission and revised as necessary.

The bill also would establish a procedure involving township supervisors (or the chief elected officer of the local governing body) for resolving disputes between farm owners, tenants, or operators and their neighbors.

"Generally accepted agricultural and management practices" would mean those practices defined by the commission in light of advice from a number of academic, governmental, and agricultural industry organizations. These organizations would include:

- the Michigan State University Cooperative Extension Service and the Agricultural Experiment Station,
- the U.S. Department of Agriculture Soil and Conservation Service and the Agricultural Stabilization and Conservation Service,
- the Department of Natural Resources, and
- "other professional and industry organizations."

Mediation in nuisance disputes. If someone alleged that a farm or farm operation was a public or private nuisance, that person or the owner, tenant, or operator of that farm or farm operation could make a request in writing to the township supervisor or chief elected officer of the local governing body to provide an informal conference on the issue in dispute.

The township supervisor, or his or her authorized representative, would be required:

- to invite the complainant and the farm owner (tenant, or operator) to attend the informal conference and to explain orally or in writing the issue in dispute,
- to take measures as he or she considered expedient to effect a voluntary, amicable, and expeditious adjustment and settlement of the parties' differences, and
- to assist in negotiating and drafting any agreement for the adjustment and settlement of their differences.

All costs pertaining to the informal conference would have to be borne equally by the complainant and the owner, tenant, or operator of the farm or farm operation.

OVER

The state Agriculture Commission would be required to compile and maintain a list of people who had expertise in generally accepted agricultural and management practices and dispute resolution and to make this list available to people involved in dispute resolution under the bill.

MCL 286.472 et al.

HOUSE COMMITTEE ACTION

The House Committee on Agriculture and Forestry added an amendment that would require "other professional and industry organizations" (in addition to the organizations already mentioned in the Senate bill) to participate in advising the Agriculture Commission on "generally accepted agricultural and management practices."

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency (11-12-87), the bill would have no impact on state or local government.

ARGUMENTS:

For:

Agriculture is Michigan's second leading industry, generating approximately $16 billion annually, according to Michigan State University. Nationally, Michigan also is a major agricultural producer, ranking among the top 10 states in production of nearly 50 agricultural commodities. The future of Michigan agriculture depends on expansion in the area of animal agriculture. Without adequate protection from frivolous nuisance suits, often based more on emotion than fact, the economic interests of the agricultural industry — and of the state — will continue to suffer. The bill would protect farmers from such lawsuits by providing a scientifically based, legally binding definition of accepted agricultural practices and by providing a means for mediating disputes other than through costly, time-consuming lawsuits.

Response: Although industry critics of rural residents who bring lawsuits against farming operations often characterize the complainants as "emotional," the issues at stake — environmental degradation and threats to public health — are legitimate and legitimately "emotional." When elderly retired people cannot leave their homes because of the high levels of air pollution, this certainly is stressful and "emotional" for them. In some cases, moreover, complainants have been subjected to anonymous harassment (late night telephone calls, being followed or chased when driving, and so on) once their complaints have been acted upon. Such harassment only increases the residents' level of stress and frustration.

Secondly, however, the bill's provisions for mediation are unlikely to reduce the number of lawsuits. Mediation is neither mandatory nor binding, it may involve as mediators the very people involved in disputes (in at least one lawsuit against a hog farm the township supervisor was one of the major plaintiffs), and the requirement that costs be shared equally among the parties may be prohibitively expensive for individual residents (should, for example, they be required to pay for informal legal counsel brought in by a large farming operation).

While farmers must be protected from truly frivolous lawsuits, rural residents also must be protected from the environmentally inappropriate siting of what in effect are large industrial operations. The bill would appear to weaken what little protection is now afforded such residents.

For:

Farmers who operate intensive livestock operations in accordance with acceptable waste management practices must be protected from harassment and nuisance complaints brought by newly-rural residents unused to farming practices. The bill would establish a mechanism for defining "generally accepted agricultural practices," which should provide legal protection to those farmers who complied with these practices.

Response: If the director of the Department of Agriculture has not defined "generally accepted agricultural practices," what reason is there to believe that the Agriculture Commission will be able to do so? Farming operations are so diverse in size and type, and are subject to such unpredictable natural forces and widely fluctuating markets and prices that it is difficult, if not impossible, to develop an adequate definition of "generally accepted" practices — particularly one which will not unfairly limit farmers.

Reply: Although the agriculture industry in the past may have resisted governmental attempts to define "generally accepted agricultural practices," the prospect of having the courts take over this function has convinced many in the industry that the time has come to at least begin to attempt such a definition. The provision in the bill that requires annual review and, if necessary, revision, gives the industry (and others) the opportunity for further input should that appear necessary.

Against:

The bill appears to assume that "acceptable agricultural practices and management" as defined by agricultural experts will also be environmentally sound and protective of the public health. And yet it has become increasingly clear in recent years that even "traditional" (that is, post-World War II chemically-based) agricultural practices and management pose significant environmental and public health risks. Chemical fertilizers and pesticides have proven environmentally more damaging than initially supposed, while the long-term environmental impact of the relatively recent replacement of smaller, family-owned farms by large, corporate-owned "mega-farms" (including intensive livestock operations) remains questionable. The bill may provide economic protection to the agricultural industry, but does so at the expense of environmental quality and protection of the public health.

Against:

There is a difference between traditional, family-owned farms, where the owners live and work on their farms and are part of the rural neighborhood, and large, investor-owned corporate farms, where the owners have little or no concern with the impact of their operations on the surrounding area. At the very least, the bill should require the Agriculture Commission, in its definition of "generally accepted agricultural and management practices," to consider the size, siting, and community impact of farming operations.

POSITIONS:

The Department of Agriculture supports the bill. (12-1-87)

The Department of Natural Resources supports the bill. (12-1-87) The following groups testified in support of the bill:
The Michigan Farm Bureau. (11-23-87)
The Michigan Association of Conservation Districts. (11-23-87)

The following groups testified in opposition to the bill:
Save America's Farming Environment (SAFE). (11-23-87)
Indian Lakes Association. (11-23-87)