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## RIGHT TO FARM PROTECTIONS

House Bills 4299 - 4301

Sponsor: Rep. Carl F. Gnodtke

Committee: Agriculture and Forestry

Complete to 2-6-95

### A SUMMARY OF HOUSE BILLS 4299 - 4301 AS INTRODUCED 2-2-95

The Right to Farm Act was 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, and both the Land Sales Act and Seller Disclosure Act require persons selling real property to disclose certain information regarding the property to prospective buyers. The bills would amend the acts to 1) implement procedures which the director of the Department of Agriculture would have to follow to investigate complaints filed against farmers for certain farm-related activities, 2) require the plaintiff, in a case where a farmer was alleged to have engaged in illegal activities but was found by the director to have used "generally accepted agricultural and management practices," to pay to the defendant farmer his or her reasonable court costs, including actual attorney fees, and 3) require persons who offered for sale real property located near a farm or farming operation to disclose this fact and other related information to prospective buyers of the property. None of the bills could take effect unless all were enacted.

House Bill 4300 would amend the Right to Farm Act (MCL 286.472 and 286.473) to require the state agriculture commission to request the director of the Department of Agriculture (DOA) or his or her designee to investigate all complaints involving a farm or farm operation. Under the bill, the commission and the department director would have to enter into a "memorandum of understanding" with the Natural Resources Commission and the director of the Department of Natural Resources, and investigating and resolving environmental disputes could only be done according to the memorandum. The agriculture commission and director also would have to develop procedures for investigating and resolving other farm-related complaints.

The bill, however, specifies that a farm or farm operation would not be a public or private nuisance due to any of the following:

- \* change in ownership or size;
- \* temporary ceasing or interrupting of farming;
- \* enrollment in governmental programs;
- \* adoption of new technology; or
- \* a change in the type of farm product that was being produced.

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If, after investigation, the director/designee found that the person responsible for a farm or farm operation was using generally accepted agricultural and management practices (GAAMP)--which the act defines as "those practices as defined by the [agriculture commission]"--he or she would have to notify that person and complainant of this in writing. If the director identified the source or potential sources of the problem caused by the use of other practices, he or she would have to advise the responsible farm operator that "necessary changes should be made" to resolve or abate the problem and to conform with GAAMP. The director also would have to determine if the changes had been implemented and notify the person responsible for the farm or farm operation and the complainant of this determination in writing.

The director would have to require of the complainant payment of the full cost of investigation of any additional complaints beyond three complaints for which the director found the farm operation to be using GAAMP. In any nuisance action brought in which a farm operation was alleged to be a nuisance, if the defendant farm or farm operation prevailed it could recover from the plaintiff the actual amount of costs and expenses determined by the court that were reasonably and actually incurred by him or her in connection with defending the action, along with reasonable and actual attorney fees. If the director assisted in defending the farm operation, he or she would recover the actual court costs and expenses incurred related to the defense, including attorney fees.

Currently, the act defines a "farm" as "the land, buildings, and machinery used in the commercial production of farm products." Under the bill, the term would mean "the land, plants, animals, buildings, structures, machinery, equipment, and other appurtenances used in the commercial production and storage of farm products." The bill also would expand the definition of "farm operation" to include the following activities: application of organic materials, liming materials, or pesticides; use of "alternative pest management techniques"; fencing, feeding, watering, sheltering, transportation, treatment, use, and care of animals; management, storage, transport, utilization, and application of farm by-products, including manure or agricultural wastes; and conversion from one farm operation to another activity.

House Bill 4299 would amend the Land Sales Act (MCL 565.808) to require the owner of land which had been subdivided and was being offered for sale to include within the proposed property report--which must contain certain information about the property for sale and be submitted to prospective buyers--the following statement:

*This property may be located in the vicinity of a farm or farm operation. Generally accepted agricultural and management practices may be utilized by the farm or farm operation and may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Michigan Right to Farm Act. The seller is not required to disclose whether a farm or farm operation is actually located in the vicinity of the property or whether generally accepted agricultural and management practices are being utilized.*

House Bill 4301 would amend the Seller Disclosure Act (MCL 565.957) to include within the signed disclosure statement which a seller of residential property is required to submit to prospective buyers of the property a statement identical to that required under House Bill 4299.