House
Legislative
Analysis
Section

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RIGHT TO FARM PROTECTIONS

House Bill 4299 as introduced
House Bill 4300 (Substitute H-2)
House Bill 4301 (Substitute H-1)
First Analysis (2-21-95)

Sponsor: Rep. Carl F. Gnodtke
Committee: Agriculture and Forestry

THE APPARENT PROBLEM:

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. Since it's enactment in 1981, the act has worked to reduce the number of frivolous lawsuits brought against persons engaged in legitimate farming activities who, in the course of their labors, are careful to follow "generally accepted agricultural and management practices" (GAAMPS). However, after some confusion about exactly what these standards were, the act was amended in 1987 to require the State Agriculture Commission, in consultation with the Department of Natural Resources and various other groups, to develop an objective set of agricultural and environmental standards with which all farms or farming operations must comply. Records kept by the Department of Agriculture (DOA) indicate that GAAMPS not only reduced the annual number of frivolous nuisance suits filed against farm operations from their mid-1980s levels, but stabilized the number of them throughout the 1990s. Also, as both the DOA and DNR were actively involved in responding to farm-related environmental complaints, these departments entered into a "memorandum of understanding" in 1993 to delineate their respective roles and responsibilities in providing environmental oversight of farming operations. As the memorandum has established a workable process of acting on farm-related environmental complaints, it has been suggested that it be statutorily recognized in the act. In addition, though the number of farm-related nuisance complaints has fallen over the last decade, the DOA says it still received 135 such complaints in 1994, most of which related to legitimate manure management practices utilized by farmers. Farmers who must defend against such suits, of course, often are economically harmed even if they win, partly from not being able to continue farming activities while a court decides a case but also due to the costs of defending themselves. To further protect farmers against frivolous lawsuits, some people believe the act should require plaintiffs of such suits who fail to prove that a farmer was not using GAAMPS to pay the farmer's full costs in defending him or herself. And finally, because farming nuisance complaints often are brought by persons who have recently moved into an area close to a farm but who may not understand the "environmental risks" of living close to one, it has been proposed that both the Land Sales Act and Seller Disclosure Act be amended to require persons selling real property near farming operations to disclose this fact to prospective buyers of the property.

THE CONTENT OF THE BILLS:

The bills would amend the Right to Farm Act, the Land Sales Act and the Seller Disclosure Act 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 that conformed to "generally accepted agricultural management and practices" (or GAAMPS) could not be found to 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.

If upon investigation the director/designee found that the person responsible for a farm or farm operation was using generally accepted agricultural and management practices--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 GAAMPS. 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.

Recovery of costs. Under the bill, if a complainant who brought more than three complaints against the same farm or farm operation which the director had found was using GAAMPS, he or she would have to pay to the agriculture department the full costs of investigation of any fourth or subsequent complaint against the same farm or farm operation if the director determined the farm/operation was using GAAMPS in the fourth or subsequent investigation. Moreover, 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 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 in a case where the farm owner prevailed, he or she could recover from the plaintiff the actual court costs and expenses incurred related to the defense, including attorney fees.

Applicability. The act currently specifies that its provisions do not affect the application of state and federal statutes. The bill would add that, for purposes of this provision, "state statutes" would mean 1) the County Rural Zoning Enabling Act, 2) the Township Rural Zoning Act, and 3) the city or village zoning enabling act (Public Act 207 of 1921).

Definitions. 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 appurtences used" for commercially producing 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 activity to another.

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 provision identifying "farm or farming operation" as one of a number of "area environmental concerns" that would have to be described on the disclosure statement.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that neither House Bill 4299 nor House Bill 4301 would have state or local fiscal implications, and that House Bill 4300 would not have fiscal implications for local governments. The agency, however, says House Bill 4300 would have state fiscal impact, but to what extent could not be determined. (2-14-95)

ARGUMENTS:

For:

Agriculture contributes enormously to Michigan's economic health (almost $40 billion yearly in sales, according to estimates by the Department of Agriculture) and currently is the state's second leading industry. The Right to Farm Act recognizes the importance of farming and agricultural production in this state by establishing protections for farmers against frivolous nuisance lawsuits brought by nearby residents. The act provides for the development of "generally accepted agricultural and management practices" (GAAMPS) by the agriculture commission, which are used as a standard for judging whether particular activities of farmers/farming operations are legitimate or not. The act has worked well to reduce the number of nuisance suits brought against farmers over the last 15 years. Even so, the agriculture department reports that 135 nuisance complaints were filed against farmers in 1994, many of them related to farmers' use of manure. Manure, of course, is produced by farm animals and used extensively for fertilizing crops. Unfortunately, people who recently have moved close to farms may not realize the many ways farms affect the surrounding environment. House Bill 4300 would provide further protection for farms and farming operations by establishing five circumstances under which a farm could not be found to be a nuisance. The bill also would adopt in statute the current process used by the agriculture commission and the DNR to investigate and act upon complaints filed against farms or farming operations, and would recognize the agreement entered into between them known as the "memorandum of understanding." But most importantly, the bill would allow both a farmer who was a defendant in a nuisance suit and the Department of Agriculture, if it helped to defend a farmer, to recover from a plaintiff the costs of defending against a suit if a farmer proved that he or she had used GAAMPS relative to a particular activity for which a complaint was filed. These provisions should help to better protect farmers from the kinds of frivolous lawsuits that can financially cripple them.

Against:

House Bill 4300 unfairly would grant farmers and the department the right to recover their costs in successfully defending themselves against frivolous suits without providing similar guarantees to plaintiffs who successfully proved that a farm or farming operation had not adhered to GAAMPS and was environmentally unsafe. While it may be true that frivolous lawsuits are filed against farmers simply to prevent them from carrying on activities considered to be annoying to non-farmers, the fact remains that some farms operate in ways that are damaging both to the environment and to the health of those living nearby. For instance, improper use of chemical fertilizers can contaminate both surface and groundwater supplies. The bill goes too far toward protecting the interests of farmers while ignoring the rights of others to be safe from the damaging effects of some farming activities on the environment.

Against:

House Bill 4300 fails to establish any time framework that either DOA or DNR would have to follow in responding to farm complaints or deadlines by which owners of farms found to be violating GAAMPS would have to change improper agricultural or management practices. Also, by giving the DOA primary authority to investigate and act on complaints, the bill essentially would rig the whole process in farmers' favor as DOA may be inclined to overlook some farming practices that

might otherwise be frowned upon by the more environmentally-conscious DNR.

Response:

The agriculture department has as much if not more to lose in being too easy regulating the practices utilized by farmers simply because any farming activities that result in damage to the environment could harm both the integrity and, ultimately, the financial stability of the state's agricultural industry.

For:

House Bills 4299 and 4301 could help prevent disputes from arising between farmers and people unused to farming activities who are considering moving near farms by requiring sellers of residential homes and subdivided lots to disclose to prospective buyers the fact that farming activities may occur nearby. House Bill 4299 would require a statement to be included in the property report issued to prospective buyers, as required by the Land Sales Act, not only that a farm is located nearby but that it may engage in activities considered annoying by the buyer but which, nonetheless, are protected under the Right to Farm Act. And House Bill 4301 would amend the Seller Disclosure Act to require a seller of residential property to reveal on the disclosure statement that must be submitted to all prospective buyers of the property that a "farm or farming operation" was one of various environmental concerns associated with the property.

Response:

The disclosure provision contained in the committee substitute for House Bill 4301 is considerably weaker than the full disclosure statement (similar to what House Bill 4299 would require) that the original version of the bill would require. The full disclosure statement would more effectively alert potential buyers of property located near farms not only about a farm's presence but that its operations were statutorily protected. In fact, the entire package of bills could be strengthened if it were amended to require the general public to be educated (perhaps by the agriculture department) about the relative importance of agriculture to the state's economic interests and Michigan's commitment to protecting the rights of its farming communities.

SUGGESTED AMENDMENTS:

The Michigan Environmental Council suggests the following amendments to the bill:

* Delete "fish and other aquacultural products" from the definition of "farm product".

* Qualify language that exempts a farm from being a nuisance if it undergoes a "change in ownership or size." Instead, the bill should specify that a farm would not be a nuisance if there were "a change in ownership, or a change in size that does not significantly alter the character of the farm or farm operation".

* Define more specifically the term "temporary cessation of farming".

* Exclude from DOA authority complaints of a civil or criminal nature which were not related to agricultural or environmental concerns, instead of granting blanket authority to investigate "all complaints" concerning a farm. Also, the bill should specify that complaints involving gross negligence or acts of intentional disregard for the law would have to be investigated by another regulatory agency (i.e., DNR or state police).

* Make the "memorandum of agreement" between the agriculture department and the DNR subject to public review and comment before it's finalized, and limit the time between when a complaint is filed and the date when it could be referred to the DNR to one year.

* Provide a time table for when DOA would have to respond to complaints against farms (no more than six months after a complaint is made) by issuing recommended changes to the farm owner, and when the owner would have to respond to the DOA's directive (no later than 90 days).

* Require the defendant owner of a farm (and the DOA, if applicable) who was unsuccessful in defending against a farm complaint to pay the full costs of recovery to the prevailing plaintiff in a nuisance suit.

POSITIONS:

The Department of Agriculture supports House Bills 4299 and 4300, and would support House Bill 4301 with the original language regarding the seller's disclosure statement. (2-17-95)

The Michigan Townships Association supports House Bill 4300. (2-16-95)

The Michigan Farm Bureau supports House Bill 4300. (2-17-95)

The Michigan Association of Realtors supports the version of House Bill 4301 (Substitute H-1) that was reported from the House Agriculture and Forestry Committee. (2-16-95)

The Michigan Environmental Council would support House Bill 4300 with its suggested amendments. (2-16-95)