Other States' Approaches to Right to Farm Laws

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There are several different methods that Right to Farm laws from different states use to protect agricultural operations from nuisance suits and local ordinances. Standard Right to Farm laws do not offer much protection against nuisance suits, because farmers cannot afford to defend themselves against nuisance claims. There are two methods that have been devised to overcome this flaw in the protection offered by Right to Farm laws. The first is fee shifting, or shift the cost of the lawsuit to the plaintiff. The second is to use either an administrative review process or mediation to resolve disputes. In addition, the Right to Farm laws of several states prevent local ordinances from declaring agricultural practices to be a nuisance or zoning them out of existence.

Fee Shifting:

There are two different approaches that are used to shift the cost of a lawsuit from the farmer to the plaintiff. The first makes the plaintiff liable for cost and attorney's fees if the farmer successfully defends against the nuisance claim. This approach is used by Illinois (IL ST CH 740 § 70), Texas (TX AGRIC § 251.004), and Wisconsin (WI ST 823.08). In addition to its fee shifting clause, Wisconsin's Right to Farm law also limits the remedies a court can use if it finds that an agricultural operation is a nuisance. Wisconsin courts are

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prevented from substantially restricting the agricultural use of the property unless it is a threat to public health or safety and the court consults with public agencies that have an expertise in agriculture and provides the agricultural operation with reasonable time to comply. The second approach to fee shifting is to make the plaintiff liable for the expenses of a lawsuit if it is found to be frivolous by the court. This is a higher standard than simply successfully defending against a nuisance suit. This approach is used by Hawaii (HI ST § 165-4), Louisiana (LA R.S. 3:3610), New Mexico (NM ST § 47-9-7), and Missouri (MO ST 537.295). There are very few instances where courts have used these statutes to award attorney fees to an agricultural operation, so it is unclear how effective these laws are.

Administrative Review:

There are several states that employ some method of handling nuisance claims against agricultural operations without resorting to a trial. Section 10 of New Jersey's Agricultural Development and Farmland Preservation law (NJ ST 4:1C-10) requires that any person who has a complaint against a commercial agricultural operation file a claim with their county agricultural development board prior to filing an action in court. These boards review the agricultural activities that are the basis of the complaint to see if the activities meet the recommended agricultural management practice. If there is no recommended agricultural management practice, the board forwards the complaint to the State Agricultural Development Committee which examines the activity to see if it constitutes a generally accepted agricultural operation or practice. Any agricultural activity that is found to meet the recommended agricultural management practices or determined to be a generally accepted agricultural practice and does not pose a direct threat to public health and safety has an irrebuttable presumption that it is not a public or private nuisance. The findings of the

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county boards are appealable to the State Agricultural Development Committee. The State Committee's findings are appealable to the Appellate Division of the Superior Court.

New York's Right to Farm law (NY AGRI & MKTS § 308) is similar to New Jersey's except that a complaint is not required to be filed with the Commissioner of Agriculture and Markets prior to trial. In New York, any person can request that the Commissioner of Agriculture and Markets issue an opinion as to whether certain agricultural practices are sound. Agricultural practices that are sound and take place in an agricultural district or on land that is subject to an agricultural assessment do not constitute a private nuisance.

The Michigan Right to Farm law (MI ST 286.474) gives a person the option of filing a complaint with the director of agriculture. Within seven days the director must conduct an on-site inspection. If the agricultural operation is deemed to be using generally accepted agricultural and management practices, the director will notify the complainant. If the practice is not generally accepted, the director will notify the agricultural operation who will have 30 days to comply with the generally accepted agricultural and management practices or file an implementation plan detailing the schedule for completion of the necessary changes. A complainant that brings more than three unverified complaints against the same agricultural operation may be ordered to pay for all other unverified complaints against that operation. In addition to this, the law provides that a seller of real property located within one mile of an agricultural operation may give the buyer notice of the agricultural operation and that its normal operation is protected by the Right to Farm law.

Protection from Local Ordinances:

Several Right to Farm laws include protection for agricultural operations from local ordinances. Virginia's Right to Farm law (Va. Code Ann §3.1-22.29) makes any local ordinance null and void if it would make an agricultural operation a nuisance, unless the

nuisance results from negligent or improper operation. The Florida Right to Farm law (F.S.A. §823.14) prevents local governments from interfering with agricultural operations on land classified as agricultural land, if the agricultural activity is already regulated at the state level. The New Mexico Right to Farm law (NMST § 47-9-7) provides that any local ordinance that makes an agricultural operation a nuisance shall not apply when an agricultural operation is located within the corporate limits of any municipality.

Louisiana's Right to Farm law (LSA-RS 3:3610) states that no parish governing authority shall adopt any ordinance that declares an agricultural operation a nuisance if it is operated within generally accepted agricultural and management practices or any ordinance that forces the closure of an agricultural operation. The Louisiana law also encourages farmers and government entities to seek resolution through meditation and a court is allowed to require the parties to attempt mediation at any time prior to trial. The court also has the power to award cost and attorney's fees to which ever party prevails.

Conclusion

The laws discussed above are just a few ways in which different states across the nation have dealt with the lack of protections afforded by the standard Right to Farm Law. The laws mentioned are not exclusive, but rather are illustrative of the action that has been taken to protect agricultural operations from nuisance suits and local ordinances. By using fee shifting, administrative review, and protection from local ordinances in their Right to Farm Laws a variety of states have taken the steps to further preserve and protect the agricultural community.

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