

March 14, 2024

Testimony on H.128 – An Act Relating to Removing Regulatory Barriers for Working Lands Businesses to the House Committee on Environment and Energy Testimony

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The following written testimony covers a few key points about H.128 and its importance to increasing the economic viability of our farming community, particularly small farms, diversified farms, and farms that are exploring ways to diversify income streams that originate from their farm.

Act 143 of 2018 created the municipal land use category we know today as accessory on-farm businesses (AOFBs). Back in 2018 a group of Farm to Plate Network members, which included agricultural organizations, farmers, town and regional land use planners, and environmentalists came together to create this new land use category in recognition of the changing nature of farming in Vermont, which could be characterized as a time of innovation of farm-based value-added enterprises, agritourism experiences, and emergent and evolving challenges posed by global commodity markets and industry consolidation.

The realization we came to as a state in 2018 in passing Act 143 was that farming today is different from farming of the past, and accessory on-farm businesses are an expression of this new reality (and in some respects a return to a bygone era of rural economic and community life). Farms today cannot comfortably rely on the production of one type of commodity to stay afloat. It may come as a surprise to some members of the Committee that, according to the 2022 Census of Agriculture, only 43% of farms in Vermont (2,813 of 6,537) reported having a positive net gain, with the remaining 57% of farms reported having net losses. With ever increasing market consolidation, farm viability is increasingly reliant on creative forms of diversification and value-added activity. This includes accessory on farm activity that brings people to the farm to purchase and consume food products, and farm-based experiences that create new revenue opportunities beyond just product sales that also act to establish longstanding connections and opportunity to the surrounding community. In other words, farms and the agricultural community were not advocating for the creation of AOFB exemptions to evade regulation altogether and create windfall profits for themselves, but because they are essential to staying in business and remaining as an important part of their rural community and economy.

Act 143 was successful in giving us a framework to standardize regulations of AOFBs at the municipal level across the state, with the goal of creating a regulatory environment where AOFBs could thrive in a responsible manner. Compromises were made, it wasn't perfect, but it created a foundation to build upon. Since 2018, farms, towns, planners and zoning officials, and state government have had direct experiences with the regulatory framework of Act 143, and naturally from these experiences improvements have been identified. Additionally, the farming, agritourism, and direct market landscape has shifted since that time and through Covid, with farms exploring creative collaborative models to produce, process, market, and sell their products and farm-based experiences directly to consumers. H.128 incorporates learnings and evolution in the direct sales marketplace from the years since Act 143 was passed in a few important ways:

- First: H.128 strengthens the original AOFB definition in subtle but critical ways. Decoupling the accessory storage, preparation, processing, and sale of qualifying products from a percent threshold of qualifying products that are produced on the farm where the AOFB is located is more representative of the realities of how these accessory activities actually occur in order to be viable, is more practical from an enforcement perspective, and more equitable for farms of different sizes and forms of production. Not only did the sales threshold introduced difficulties around practical enforcement and accounting, but it did not acknowledge significant differences in the unit value of agricultural

commodities and valued added products produced by different farm types. In this way, the proposed change is a good equity component that acknowledges differences in value between farm products that may be produced by the farm, and products it may be selling from others. For example, imagine a farm is operating a farm store, selling their own products plus products bought directly from other farms. Imagine that they're selling carrots and onions grown on their farm, and cheese and maple syrup from two nearby farms. Cheese and maple are on average more expensive by unit, and if the AOFB definition for storage, preparation, processing, or sales was exclusively tied to value of sales some farms would unfairly be at a disadvantage for what they could do solely because of the unit value of the products they sell. Focusing (11)(A)(i)(I) on product broadly produced on a farm provides more equity of opportunity to different farm types and also potentially allows for more mutually beneficial collaborations between farms. For example, one farm may have an ideal location for farm store sales, but it also may produce products of lesser unit value. The current definition presents barriers to farms effectively collaborating for mutual benefit.

Also, there is widespread agreement that farms selling agricultural products from other farms is broadly beneficial in promoting farm viability and Vermont's working landscape, and more and more farms during and since Covid have expanded the product mix they're offering at farm stores and stand to attract and retain customers while capturing retail margins. And farms lacking infrastructure, or an ideal location to sell directly in this way, are looking for farm-to-farm partnerships that H.128 promotes.

- Second: the inclusion of the farm's merchandise as a qualifying product is not insignificant and better reflects the reality of how farms are marketing their business and diversifying income. This came up as a pain point in stakeholder meetings during the fall and winter of 2023. It has been a point of confusion – can I sell merchandise at the farm store? if I do how would that compromise the AOFB designation? – and as a result was potentially inhibiting farms from investing with confidence in AOFB activity or fulfilling the full potential of their AOFB. The ability to sell farm merchandise as part of the AOFB acknowledges that merchandise as part of the farms overall product mix, and that the modern marketing needs of farm business to create strong brand connection and loyalty with customers requires the presence of merchandise.
- Third, H.128 attempts to create balance and integrity for what constitutes an AOFB educational, recreational, or social event. The event and farm stay elements of H.128 are critical foundational elements to fostering and supporting innovation in our vibrant emergent agritourism industry – which is more and more a important component of farm diversification and viability. There is still reasonable debate around how clear H.128 in its current form is in defining accessory farm events or even accessory farm restaurants e.g., do the terms “substantial” and “integral” provide effective guidance to farms and communities?

A lack of clarity is not conducive to successful AOFBs or healthy relationships between regulators or in communities. I think we're close to striking the right middle ground on this issue in a way that doesn't take options away from farms to be innovative and engage their communities in healthy ways through events and meals but also limits impacts and concerns of community members. And, what the finer disagreements exist on this specific aspect should not keep us from advancing the other important improvements previously mentioned.

- Lastly: While the elements of H.128 related to Act 250 may ultimately get decoupled from the bill and taken up in broader legislative efforts to introduces reforms to Act 250, a primary driver of H.128 was to harmonizes state and municipal AOFB regulations by allowing defined AOFB activities to be added to Act 250's definition of farming and thus be exempt from Act 250 permitting. While undersnading

that the specific scope and scale of these exemptions warrants further debate and refinement, as mentioned above, farming has changed. What was accepted as the definition of farming 54 years ago when Act 250 passed no longer wholly represents the modern realities of farming today, and with that its appropriate to amend the farming definition of Act 250 to include AOFBs in some capacity. In doing so farms will have more confidence in pursuing AOFB endeavors without fearing expensive permitting processes or litigation, or at the very least be able to plan for the processes with greater clarity regarding what the regulatory thresholds are for AOFBs and Act 250. Also, the rationale for amending Act 250 in this way is not an arbitrary exemption being handed to agriculture, but rather consistent with Act 250's original intent and purpose.

In the words of Vermont Law Schools Richard Oliver Brooks "conserving, preserving and enhancing Vermont's complex pastoralism is Act 250's principle purpose (2) this pastoralism is composed of major landscape elements: mountains, rivers, lakes and streams, **farms and forests**, compact towns, scenic roads; (3) **this landscape is a working landscape** shaped by its residents and visitors in pursuit of their health, **recreation and economic well-being...**" (emphasis added). Adding AOFBs to the Act 250 definition of farming, or AOFB activities to Act 250 permit exemptions, provides the state with an additional tool to conserve our working landscape, or in Brooks' words, Vermont's complex pastoralism, as Act 250 intended.

As there was in 2018, there is alignment amongst agricultural organizations, farmers, government agencies, the NRB, and planners that these are sensible changes to make, much of which you'll find in the NRB's 2023 report "[Act 250 Jurisdiction over Agricultural Businesses: A report to the Vermont Legislature](#)" and in testimony that has already been provided to the House Committee on Agriculture, Food Resiliency, and Forestry.

Overall, H.128 represents an important step forward in revising AOFB regulations for the better, modernizing Act 250's definition of farming in a way that reflects the practices and realities of our time, and helps us achieve our state food system and food security goals by creating opportunities for farms to be more economically viable which in turn enhances our rural economies and regional resiliency and self-reliance. And the need for doing so is not trivial or manufactured by special interests. With climate change threatening global supply chains and food availability in addition to posing fundamental problems to the resiliency of our communities and built environment, food industry consolidation increasingly making our form of small and mid-scale agriculture economically perilous, and inequity of income, wealth, and opportunity making our citizens less and less food secure, the livelihood of our farmers and agricultural sector is more essential than ever before. As the now iconic American Farmland Trust bumper sticker states "No Farms, No Food", and I would add for the context of Vermont, "No Farms, No Food, No Working Landscape, No Climate Resiliency, No Rural Economic Well-Being". Thank you for your time to read this submitted testimony and I'm happy to answer any questions the committee may have.

Gratefully,



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