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RE: Proposed Changes to Act 143 – Accessory On Farm Business

Dear Representative(s):

I am a 3rd generation Vermont Sugarmaker located in Chittenden County. Our farm was one of the first to utilize the current Accessory On Farm Business law (Act 143) to grow our existing farm operations. Act 143 allowed us to expand into products that we would never legally have been able to produce on the farm without this law. The most successful of these products has been the addition of our line of pure maple ice creams. To my knowledge we are the only entity in the world that produces ice cream from scratch using pure maple syrup as the primary sweetener to manufacture the ice cream base (not just as a flavor enhancer). We use our pure maple syrup as the source of sugar and we purchase all of our dairy products locally from Monument Farms. We also purchase as many other ingredients locally as we can (berries etc.) to the benefit of all of our neighboring farms.

When Act 143 was originally introduced in 2018, we worked closely with the Vermont Department of Agriculture and Department of Environmental Conservation for nearly a year to obtain the proper dairy handling license and wastewater exemptions to be able to produce our own ice cream on the farm under the Accessory On Farm business law. To date we have invested over \$150,000 in equipment (pasteurizers, ice cream manufacturing equipment, chillers, freezers, etc.) and countless hours in training and development of various ice cream flavors all sweetened naturally with our maple. We currently produce eight primary flavors as well as a number of seasonal flavors. This is all produced on the farm and primarily sold from our sugarhouse. The response to the ice cream from the public has been frankly overwhelming. We now boast a huge local following and we have gone through three separate upgrades to be able to stay up to demand. Today in fact, we are manufacturing Maple Blueberry Cheesecake and Maple Cookies and Cream flavors to prepare for the upcoming statewide Maple Open House weekend on March 23 and 24.

The addition of ice cream to our larger sugaring business has been a game changer. It has allowed us to draw enough visitors to the sugarhouse to now be open to the public on a year-round basis. We host many thousands of visitors and school children annually from all over the world for sugarhouse tours, maple education, sampling and purchases of a wide variety of Vermont maple products (including our ice cream). These changes have quadrupled our total revenues in less than 5-years which has allowed to invest in all sorts of maple sugaring improvements and innovative technologies. Our production efficiencies have skyrocketed.

Today I can now monitor the entire operation and run much of the sugarhouse from my Iphone. Perhaps more importantly, this has propelled us to a profitable agricultural business that is thriving. Keeping a working landscape was important to us, however without the ability to manufacture and sell the types of innovative products we are able to produce under Act 143, at some point the difficult decision would have had to have been made to simply sell off and develop the land instead of growing our sugaring business. Our goal today is to grow our business to a point that our farm can be profitable for future generations. Act 143 has opened the door to that opportunity.

I was recently made aware of the proposal to change Act 143 in a manner that would likely remove that opportunity. Let me explain.

Act 143 currently has a broad definition of eligible activities and products that qualify under the Accessory On Farm Business law. For example, our farm qualified for producing maple ice cream because more than 50% of the total annual sales on the farm were from qualifying products principally produced on the farm. More than half of the value of the ingredients in the ice cream is from our maple syrup (maple syrup is valued at roughly 10-12 times what dairy is valued at per gallon).

However, the language in the current bill pertaining to Act 143 would add substantive changes to the definition of qualifying products as well as now defining the term “Principally Produced” as having to have greater than 50% of the qualifying product measured by volume or weight produced on the farm. I believe this change will now disqualify the manufacturing of our maple ice cream from being considered as a qualifying Accessory On Farm Business practice. In discussions with Vermont Farm Bureau representatives, the intent of these changes were primarily to exempt a qualifying Accessory On Farm businesses from Act 250 jurisdiction as well as expanding the potential products and activities that could be considered qualifying. Defining principally produced by volume or weight will in fact drastically narrow the number of products that might considered eligible under the law. In my view, this change appears to fly in the face of the intended goal. I’ve included the current language in Act 143 for simplicity in understanding this.

Current language in Act 143

“(11) Accessory on-farm businesses. No bylaw shall have the effect of prohibiting an accessory on-farm business at the same location as a farm.

(A) Definitions. As used in this subdivision (11):

(i) “Accessory on-farm business” means activity that is accessory to a farm and comprises one or both of the following:

(I) The storage, preparation, processing, and sale of qualifying products, provided that more than 50 percent of the total annual sales are from qualifying products that are principally produced on the farm at which the business is located.

(II) Educational, recreational, or social events that feature agricultural practices or qualifying products, or both.....”

(iv) “Qualifying product” means a product that is wholly:

- (I) an agricultural, horticultural, viticultural, or dairy commodity, or maple syrup;
- (II) (II) livestock or cultured fish or a product thereof;
- (III) (III) a product of poultry, bees, an orchard, or fiber crops;
- (IV) (IV) a commodity otherwise grown or raised on a farm; or
- (V) (V) a product manufactured on one or more farms from commodities wholly grown or raised on one or more farms.

It is also important to note that the term “principally produced” is not defined in the current version of Act 143. The proposed changes to the definitions of qualifying products in the current bill are as follows:

Changes to Act 143 language as currently proposed

“(vii) “Qualifying product” means a product that is wholly principally:

- (I) an agricultural, horticultural, viticultural, or dairy 6 commodity, or maple syrup;
- (II) (II) livestock or cultured fish or a product thereof;
- (III) (III) a product of poultry, bees, an orchard, or fiber crops;
- (IV) (IV) a commodity otherwise grown or raised on a farm; or
- (V) (V) a product manufactured on one or more farms from 11 commodities wholly grown or raised on one or more farms.

The current draft version of the bill also has added a definition of “Principally Produced” as follows:

“Principally produced” means, for the purposes of subdivision (22)(E) of this section, that more than 50 percent of a raw agricultural commodity or other agricultural product is grown or produced on the farm. The majority percentage shall be determined over a consistent and reasonably defined time period. The percentage of a raw agricultural commodity grown or produced on the farm shall be determined by measuring the commodity’s volume or weight. The percentage of an agricultural product grown or produced on the farm shall be determined by measuring the volume or weight of the product ingredients or materials, excluding water.

The change to the definition of “Qualifying Product” and adding a definition to the term “Principally Produced” may seem subtle, however the impact is going to be substantial on our business and many others in my opinion. In fact, I believe this change would likely put us out of

business in the long run. The real focus of these changes from the agricultural community's side has been on ensure that qualifying products and activities under Act 143 were exempt from Act 250 jurisdiction. No one that I am aware of in the agricultural community was or is asking for changes that would narrow the definition of qualifying products or activities. I believe this was an oversight on the Agricultural Committee's part as this process has been due to crossover. I would encourage you to have a discussion with the leadership of House Agriculture about their intent when drafting the bill. I'm certain that that their goal was not to disqualify farms or products that are currently being produced under Act 143. To put this in perspective, I'm not even sure that someone growing wheat and making it into wheat flour could then use the flour to produce wheat bread on the farm and have it be considered a qualifying product under the 50% by weight or volume definition.

As you realize, we are losing Vermont farms at an alarming rate. I believe we should be expanding opportunities for farms to be successful under Act 143, not limiting their ability to do so by severely limiting the types of products may be considered eligible. The desire to define a qualifying product by volume or weight certainly did not originate in the agricultural community and is in fact going to be detrimental to the agricultural community. The concerns that I have heard from the agricultural community are and have been centered around ensuring that the Accessory On Farm Business activities were exempt from Act 250, a view which I strongly support and share. The agricultural community has not (and is not to my knowledge) asking to narrow the definition what may be considered qualifying products under Act 143.

With respect to the proposal to change to the definition of qualifying product under the proposed bill, I would offer the following suggestions:

1. Leave the definition of qualifying product as currently stated in Act 143 (see above).
2. Eliminate the language in the proposed bill which defines the term "Principally Produced" as 50% or more by volume or weight.

Thank you for listening to my concerns. Thank you also for supporting Vermont agriculture and for your service to our State.

I'm happy to speak with anyone concerning this matter. I'd also encourage you to talk with representatives of Vermont Farm Bureau about these proposed changes and the unintended consequences of these changes to the existing farms that are currently using Act 143.

Sincerely,

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