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- Rural Vermont introduction
- Response to largely the current version of the bill, and to some of what we've heard acknowledging that we have not been able to make time to hear all of the testimony on this bill, or do outreach to our community extensively around it (either versions of it) - we are working from testimony we have seen, analysis of the bills by staff and some of our board, and other stakeholders and perspectives that are shared in this testimony.
- We understand that farmers of all scales and types are facing new and growing pressures from a diversity of sources - one being how farms and farming and particular aspects of farming are being seen, experienced, and responded to by neighbors and or communities as people grow further from living lives on farms, from being food producers themselves, from being members of rural communities who work together on the working lands and are in tight community with one another. We have greater economic inequity than the past, more farms farming on leased land owned by people who don't farm it and in some cases may not live here full time (many farmers are farming across multiple leases with multiple property owners). Farmers - and our food security and food sovereignty - are, in our opinion, in an ongoing crisis and have been for a long time; and dealing with unreasonable claims from neighbors about their farm operations is another straw on the camel's back. We've worked with and / or have heard from farmers who have dealt with complaints related to how they graze or house their livestock, livestock getting out due to fencing being downed by weather or wild animals, how their composting operation affect neighbors, how farm odors affect or concern neighbors, how the sound of machinery affects neighbors, and I think that - speaking as a farmer myself - most of us have dealt with some degree of challenging interaction with somebody at sometime who objected to something we are doing.
 - In all of this work, we have not heard any suggestions this year, or in recent years, from our members to expand the current protections from nuisance suits that farmers have in Vermont. We have not had the opportunity to do extensive research on our membership related to this - and beyond that, we haven't seen any comprehensive research or outreach work related to how the broader agricultural community in Vermont is experiencing the effectiveness or lack of effectiveness of the current statute (and this may be an important thing to do). We have heard some concerns from members of our organization, and from colleagues in member organizations who are also a part of the National Family Farm Coalition, about this particular right to farm law in some cases, and how "right to farm" laws in general in states around the country (which are different state by state) have impacted communities', and small and independent farms' (including dairy farms), abilities to hold large operations owned by very large corporations such as Smithfield, Cargill, and JBS accountable for the human and environmental health impacts they create, and to have a degree of local control

over the impacts to local communities and how to respond. We also recognize, and national allies fighting “right to farm” in their states have acknowledged in conversation, that VT has a very different agricultural culture and economy than other states, that even the largest farms in VT (to our knowledge) are independently owned, and that we do not face the same type of corporate actors and degree of threat posed by their contracted farm businesses, making this conversation and consideration of appropriate protections more nuanced and complicated. In this respect, we think that contextualizing VT’s law in relationship to other states’ laws may be an important thing for the legislature to consider further. It’s one thing to hear Legislative Council and others describe the different legal regimes in different states, it’s another to explore what the different agricultural economies and cultures look like in these states, how these right to farm laws may have affected different types and scales of farms, how they may have impacted surrounding communities in these states, what types of legal battles have been fought around them. That’s not something I can provide.

- Here are some excerpts from Vern Grubinger’s 2022 census reflection on the VAAFM website which characterize to some degree VT agriculture:
 - “Vermont has 6,537 farms, down 4% from 2017. We have 1,173,890 acres of farmland, but we lost 19,547 acres since 2017, presumably to development. These declines are attributable in part to the loss of 313 dairy farms over the same five years, a drop of 37 percent. The number of milk cows declined less, by 18%, to 105,514. The fluid milk produced by our remaining 528 cow dairies accounts for 58% of all agricultural sales in Vermont. Further, there are 265,275 forage acres, 110,962 pasture acres, and 74,800 corn silage acres, most of which feed cows. These data show how important dairy is to our agricultural economy and landscape.
 - Looking back 20 years, to the 2002 Census, we had 6,571 farms, about the same as today, but 1,508 were dairies. So nearly a thousand farms have shifted from dairy to other products, making agriculture more diverse.
 - We now have 744 farms selling vegetables and 471 farms selling berries. There are 507 farms in the greenhouse and nursery business, 441 orchards, and 266 farms selling Christmas trees.

- We have 1,345 farms with laying hens, 222 farms selling broilers, and 123 grow turkeys. There are 1,526 farms with beef cows, 1,012 farms with horses, 419 farms with goats, and 300 farms with pigs.
- Vermont leads the nation in maple production. Our 1,433 sugarmakers produced 3.1 million gallons of syrup worth \$112 million from 8.5 million taps. That's a big increase from 2 million gallons worth \$58 million from 5.9 million taps in 2017.
- ...Our agriculture may be diverse, but it is also consolidated. Just 3% of our farms account for two-thirds of all agricultural sales."
 - I think that it's also necessary to note that gross sales does not necessarily reflect the health of a business or sector, for example we see that in the 5 years between the 2017 and 2022 census we lost 37% of Vermont's dairy farms (313 farms).
 - I work to describe VT's food system in even some numerical fashion here (and Farm to Plate and others have contributed far more information to an understanding of VT's food web), because the farm and food sectors in Missouri, in Oregon, and in other states that Leg Council mentioned having "right to farm" laws do not necessarily present an equivalency to what we have or want here. We need a law suited to what we have and want in Vermont.
- For most of the farmers and farmworkers we work with locally and nationally, expanding these types of protections are not the primary determinant of whether they effectively have the "right to farm", as I started off saying, we have not had changing this statute come up from farmers. The "right to farm" for these folks is effectively determined by things like access to capital, access to farmland and housing, the lack of adequate anti-trust enforcement of agribusiness, the lack of a pay price including the cost of production plus profit, the challenges making a livelihood working on farms and running farms. If we talked to those 313 dairy farms that went out of business between 2017 and 2022, and the other types of farms as well, it would be interesting to hear from

them how much these current protections and potential expansion of these protections would have affected their ability to stay in business.

- For us, this conversation isn't about - and can't be about - impugning or privileging any particular scale or type of farm or a particular scale or type of farms "right to farm": regardless of scale and type, and as farms grow and diversify and change, they still must be responsible for the impacts they are creating and they still must have reasonable protections from frivolous or poorly intentioned actions by neighbors and / or other entities. This conversation is about what degree of entitlement food producers, farming and farmers of any scale or type, are given with respect to protection from nuisance suits (or potentially trespass, or more) due to the essential nature of farming and food production and the inherent "nuisances" it may cause; what degree of allowance farms have to negatively affect their neighbors, communities, and the environment; and what degree of protections and agency neighbors and communities have in relationship to farms which are, or are perceived to be, creating issues related to the public good. This is an important conversation for all VT farms and farmers and communities more broadly; and we hope that whatever work ends up being done on these laws, that it ultimately reflects the diversity and needs of VT's farms and farmers and communities, and consideration of these laws as they are written and applied and experienced in other jurisdictions.

Draft 2.1:

One reflection I had in reviewing these proposals. In talking about the Farm Security Fund bill, one of the things that Sam Smith mentioned a couple of times is that we don't want farms building this fund into their business plan - and I think in the same sense, we don't want farms building this law into their business plans. These are things for emergencies when essential farming activities done in a responsible way are being inappropriately challenged, and to support folks in having some protection and ability to adapt; and / or for regulations to adapt. They are not something that should be needed often - ideally in very rare circumstances.

- **Definitions of Generally Accepted Ag Practices, D**
- **(D) practices conducted in a manner consistent with proper and accepted customs and standards followed by similar operators of agricultural activities in the State.**
 - Don't have an issue with the specificity now being proposed in terms of Generally Accepted Ag practices - that seems like a potentially helpful clarification - but we did highlight this as something worth getting more clarity on. Presumably, any of these activities would be covered in the previous definitions... I'm wondering what examples make this language necessary? What are we concerned about here? There has been a lot of talk about the need to make this law more clear - but something like this seems to move in the opposite direction.

- Definition of Nuisance on Page 4:
 - (4) “Nuisance” means any interference with reasonable use and enjoyment of land, including interference from smoke, odors, **particulate matter**, dust, noise, or vibration. “Nuisance,” as used in this chapter includes all claims that meet the requirements of this definition regardless of whether a complainant designates a claim as brought in nuisance, negligence, trespass, or any other area of law or equity.
 - The second half of this definition may elicit the most concern and question as it refers to negligence (which is also referred to later in the proposal), and trespass, or any other area of law or equity if it relates to reasonable use and enjoyment of land including these new particular aspects of potential nuisance... that seems very expansive and given the siting of these terms here, and at other places in the legislation, it would be helpful to have further clarity over what this effectively means all in all - and what particular things may fall under negligence, trespass or any other area of law or equity that folks are concerned about not being covered by nuisance. Nuisance usually - based on my understanding - is based on something that happens on the farm property but which may affect people off the property; whereas trespass is something that happens off of the farm property, on somebody else's property. That's a big step to take and if we are going to consider moving in this direction we need clear understanding of why, if this is the most reasonable or effective means of meeting the concerns of the farming community in its entirety, what the risks are, and whether the farming community in its entirety supports these changes.
 - Formerly: **2) The presumption that the agricultural activity does not constitute nuisance may be rebutted by a showing that the activity has a substantial adverse effect on health, safety, or welfare, or has a noxious and significant interference with the use and enjoyment of the neighboring property**
 - This current definition of nuisance doesn't specify particular things that may cause impact, rather the necessity of a type of impact. Yes, there is some ambiguity here, but there is also concern in naming these particular potential consequences of farming as nuisances regardless of their scale or intensity or impact on “health, safety, and welfare”. Again, we have not had anybody suggest changing this statute from our membership.
 - From the Senate Bill: **No agricultural activity shall be or become a nuisance or trespass when the activity is conducted in accordance**

with generally accepted agricultural practices....(2) A plaintiff alleging that an agricultural activity is a **nuisance shall have the burden of proving by a preponderance of the evidence that:**

- **(A) the agricultural activity at issue is not entitled to the nuisance protection provided for under subsection (a) of this section because the agricultural activity is not conducted in accordance with generally accepted agricultural practice; and**
 - Understanding there are qualifiers which we are about to discuss, this language is in both drafts and we have concerns and questions about it. This directs the law away from the impact and potential transgression itself, and towards laws and other frameworks for regulating farms and practices and whether or not a farm is or was theoretically in compliance at the time a particular incident may occur (understanding that there is not day to day regulatory oversight of farms). It would seem that particular negative impacts (i'm not talking the smell of spreading manure) would be an indication that there was negligence or that there is not compliance - and I'm wondering how things like negligence (referred to later as disqualifying a farm from eligibility for these protections) are determined and by whom? Leg Council cited a situation in Oregon in which "a forestry outfit was using helicopters to spray their stands with pesticide and they inadvertently sprayed it at a residential subdivision." But the Oregon law protected the outfit because "the Oregon law protects against trespass." I know that law is written differently from this one, but I don't think we want a situation like that to be protected action whether due to the allowance for trespass, the inclusion of particular trespass or negligence claims under nuisance, or otherwise. This is an extreme example, but as we reference laws in other states in service of expanding ours, we also need to consider the impacts this has had.
 - If evidence is required to be shown by the plaintiff re: non-compliance of the farm (as opposed to the farm demonstrating compliance) what limitations or opportunities are there for the plaintiff to demonstrate this - does this require expertise over ag law or even the farm and potentially its NMP (if it has one) or other things that may demonstrate regulatory compliance? Is it difficult in general for a farmer or VAAFM to prove compliance - what does this look like? I was a little surprised that one witness testified that, the AFM asserts that government "is not going to intervene in these

right to farm lawsuits...and say whether practices are compliant.”

So if the regulator won't attest to compliance or lack thereof...who is best suited or most appropriate to determine compliance from the perspective of efficiently and effectively answering this question?

Again, it may be helpful to have examples locally and nationally exploring what kinds of nuisance suits are generally being brought, how are both parties feeling in terms of that process meeting their needs, how hard is it for a farm to prove they are eligible / in compliance where they have to and how hard is it for a plaintiff where they have to...? Ultimately, assuming best interest, we're just trying to determine who is best positioned to determine compliance and other factors of eligibility; we're not trying to make it harder for any party to determine compliance.

- And to extend this concept somewhat, If we are considering leaning on the “generally accepted agricultural practices” as the primary barometer for whether or not something may be considered a nuisance (as opposed to the impact itself), than in the case in which a farm in compliance is creating a problem without negligence, is the state and / or federal government or regulatory authority /ies as opposed to the farm then implicated or liable? It would seem that if the farm is in compliance and not negligent and theoretically doing all they think they need to do then is it the regulations themselves which aren't functioning?
- It brings up significant questions related to how one farm may impact another, and exploring the potential positive and negative impacts of a change like this would be helpful, and why a change of this nature is required right now in VT.
- All of the limitations to when a nuisance applies beginning on the bottom of page 6:
 - Such as: Negligent operation, substantial adverse effect on public health and safety, ability to recover damages or damages sustained, including water pollution and the ability of the state to essentially act in the interest of the public good.
 - The language of these contingencies paired with the suggested language and definition of the nuisance and / or trespass, etc. makes it hard to understand for us as an organization, and likely for farmers and community members, what may or may not be covered and what may or may not disqualify someone from the protection when it all shakes out. Words like “substantial”, “public health, safety, env, welfare”, which “abilities” to recover damages don't fall

under the inclusive language of the nuisance definition?, what does including in the nuisance definition “any other form of law or equity” mean in the context of these other seeming protections? In terms of the weather contingencies we’re not commenting on here... It may be appropriate to consider some degree protection for extreme weather events. We are currently working on the Farm Security Special Fund and there has been much conversation in that group and before these committees about extreme weather. I don’t know what’s most appropriate if we’re going to look to this - I think I would look to hear from people at the Farm Viability programs, and VT’s climate forecasters to determine what an appropriate threshold for an extreme weather event may be (again, considering what Sam Smith said about making that threshold significant enough that it’s not a part of the business plan, it’s not a regular occurrence - it’s rare, unique, something you can’t do anything about)

- **(a) This chapter is remedial in nature and shall be liberally construed to effectuate its purposes.**
 - What is the effect of saying it shall be “liberally construed” in the context of this particular chapter, especially given some of the ambiguities / potential places of contestation?
- In this same section on Liberal Construction, there is some naming of the allowances for farms to change types, practices, etc.; the bill also no longer refers to the protections only for pre-existing farms.
 - These are interesting elements that we have questions about, some we may support, and / or could see adding onto and supporting. It does not feel equitable for only pre-existing farms to enjoy particular significant protections for what we presume to be rudimentary farming activities and impacts. This bill does not include all food production / farms as we currently read it (having limitations based on the number of years since land was back in production) - but this is something we think could be considered. We know we are losing farms and farmland and we need to be going strongly in the other direction - ensuring that these people and farms are entitled to the same protections makes some sense as opposed to only protecting existing farmers. Is the intention of the law to protect farming and the right to food production as essential, or is it to support existing farms? Acknowledging part of the consideration here is neighbors and potential unforeseen impacts affecting them, and potentially things like property values or the ability to feel they can continue to live there in extreme cases

(such as we have heard about from colleagues in other parts of the country).

- Clarifying how farms may change practices, types of farming, etc. is also important as the current language here is a little ambiguous and concerning. If a farm wants to change how its farming, what its growing, etc. - that shouldn't impact its eligibility for these protections.

Some folks have described votes for or against this as either supporting farmers or not. From our perspective, that's not a statement that we agree with because we have heard from farmers in VT and in other states who in some cases are farmers and whom certainly support farmers, but do not support this bill or right to farm legislation in their states; and disagreeing with someone about how to best support farmers (and the other goals of this legislation) doesn't mean that one side does or doesn't support farmers. If we want to understand how to best support farmers on issues like this, perhaps gathering information from a breadth of stakeholders through a deliberate and comprehensive process may help to balance the declared purposes of the bill: protecting agricultural production as an economic contributor, preserving agricultural lands and environmental resources, increasing tourism, furthering self-sufficiency of the people, and preserving agriculture to benefit public health and welfare.

I'm happy to take questions - but that's all I have for now.