

1 S.118

2 Introduced by Senator Ram Hinsdale

3 Referred to Committee on

4 Date:

5 Subject: Agriculture; economic development; stormwater permitting; land use;
6 property transfer tax; income tax

7 Statement of purpose of bill as introduced: This bill proposes to enact multiple
8 provisions related to economic development on farms. The bill would amend
9 the requirements for the seasonal application of manure to provide an
10 exemption from the ban when liquid manure is applied through direct soil
11 injection. The bill also would exempt farms in compliance with the required
12 agricultural practices from the three-acre stormwater permit. In addition, the
13 bill would amend the right-to-farm law to provide farms with additional
14 protection from nuisance or trespass claims. The bill also clarifies that farm
15 structures, including fences, are exempt from regulation under municipal
16 bylaws or ordinances. In addition, the bill provides that farm employee
17 housing is exempt from regulation under municipal bylaw or ordinance. The
18 bill would amend the eligibility criteria for accessory on-farm businesses and
19 for eligibility of agricultural land under the Use Value Appraisal Program. The
20 bill also would exempt certain transfers of property that is part of a farming
21 operation from the property transfer tax. In addition, the bill would exempt

1 from the Vermont income tax certain net income from farming and net income
2 from the sale of certain farm property.

3 An act relating to agricultural economic development

4 It is hereby enacted by the General Assembly of the State of Vermont:

5 * * * Short Title * * *

6 Sec. 1. SHORT TITLE

7 This act may be cited as “The Food Security Act.”

8 * * * Seasonal Application of Manure * * *

9 Sec. 2. 6 V.S.A. § 4816 is amended to read:

10 § 4816. SEASONAL APPLICATION OF MANURE

11 (a) Prohibition on application. A person shall not apply manure to land in
12 the State between December 15 and April 1 of any calendar year unless
13 authorized by this section.

14 (b) Extension of prohibition. The Secretary of Agriculture, Food and
15 Markets shall amend the Required Agricultural Practices by rule in order to
16 establish a process under which the Secretary may prohibit the application of
17 manure to land in the State between December 1 and December 15 and
18 between April 1 and April 30 of any calendar year when the Secretary
19 determines that due to weather conditions, soil conditions, or other limitations,

1 application of manure to land would pose a significant potential of discharge or
2 runoff to State waters.

3 (c) Seasonal exemption. The Secretary of Agriculture, Food and Markets
4 shall amend the Required Agricultural Practices by rule in order to establish a
5 process under which the Secretary may authorize an exemption to the
6 prohibition on the application of manure to land in the State between
7 December 15 and April 1 of any calendar year or during any period established
8 under subsection (b) of this section when manure is prohibited from
9 application. Any process established for the issuance of an exemption under
10 the Required Agricultural Practices may authorize land application of manure
11 on a weekly, monthly, or seasonal basis or in authorized regions, areas, or
12 fields in the State, provided that any exemption shall:

13 (1) prohibit application of manure:

14 (A) in areas with established channels of concentrated stormwater
15 runoff to surface waters, including ditches and ravines;

16 (B) in nonharvested permanent vegetative buffers;

17 (C) in a nonfarmed wetland, as that term is defined in 10 V.S.A.
18 § 902(5);

19 (D) within 50 feet of a potable water supply, as that term is defined in
20 10 V.S.A. § 1972(6);

21 (E) to fields exceeding tolerable soil loss; and

1 (F) to saturated soils;

2 (2) establish requirements for the application of manure when frozen or
3 snow-covered soils prevent effective incorporation at the time of application;

4 (3) require manure to be applied according to a nutrient management
5 plan; and

6 (4) establish the maximum tons of manure that may be applied per acre
7 during any one application.

8 (d) Exemption for liquid manure injection. The prohibition on the
9 application of manure to land in the State under this section shall not apply to
10 the land application of liquid manure directly injected to soils, provided
11 manure is not applied:

12 (1) in areas with established channels of concentrated stormwater runoff
13 to surface waters, including ditches and ravines;

14 (2) in nonharvested permanent vegetative buffers;

15 (3) in a nonfarmed wetland, as that term is defined in 10 V.S.A.

16 § 902(5);

17 (4) within 50 feet of a potable water supply, as that term is defined in 10

18 V.S.A. § 1972(6);

19 (5) to fields exceeding tolerable soil loss;

20 (6) to saturated soils; or

1 * * *

2 (c) Prohibitions.

3 (1) A person shall not commence the construction or redevelopment of
4 one-half of an acre or more of impervious surface without first obtaining a
5 permit from the Secretary.

6 * * *

7 (7) In accordance with the schedule established under subdivision (g)(3)
8 of this section, a person shall not discharge stormwater from impervious
9 surface of three or more acres in size without first obtaining an individual
10 permit or coverage under a general permit issued under this section if the
11 discharge was never previously permitted or was permitted under an individual
12 permit or general permit that did not incorporate the requirements of the 2002
13 Stormwater Management Manual or any subsequently adopted Stormwater
14 Management Manual.

15 (d) Exemptions.

16 (1) No permit is required under this section for:

17 (A) Stormwater runoff from farms in compliance with the required
18 agricultural practices adopted by the Secretary of Agriculture, Food and
19 Markets, provided that this exemption shall not apply to construction
20 stormwater permits required by subdivision (c)(4) of this section. This

1 exemption shall apply to any farm subject to the permit requirement under
2 subdivision (c)(7) of this section.

3 (B) Stormwater runoff from concentrated animal feeding operations
4 permitted under subsection 1263(g) of this chapter.

5 (C) Stormwater runoff from accepted silvicultural practices, as
6 defined by the Commissioner of Forests, Parks and Recreation, including
7 practices that are in compliance with the Acceptable Management Practices for
8 Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the
9 Commissioner of Forests, Parks and Recreation.

10 (D) Stormwater runoff permitted under section 1263 of this title.

11 (2) No permit is required under subdivision (c)(1), (5), or (7) of this
12 section and for which a municipality has assumed full legal responsibility as
13 part of a permit issued to the municipality by the Secretary. As used in this
14 subdivision, “full legal responsibility” means legal control of the stormwater
15 system, including a legal right to access the stormwater system, a legal duty to
16 properly maintain the stormwater system, and a legal duty to repair and replace
17 the stormwater system when it no longer adequately protects waters of the
18 State.

19 * * *

20 * * * Right to Farm * * *

1 Sec. 4. 12 V.S.A. chapter 195 is amended to read:

2 CHAPTER 195. NUISANCE SUITS AGAINST AGRICULTURAL
3 ACTIVITIES

4 § 5751. LEGISLATIVE FINDINGS AND PURPOSE

5 The General Assembly finds that agricultural production is a major
6 contributor to the State's economy; that agricultural lands constitute unique
7 and irreplaceable resources of statewide importance; that the continuation of
8 existing and the initiation of new agricultural activities preserve the landscape
9 and environmental resources of the State, contribute to the increase of tourism,
10 and further the economic welfare and self-sufficiency of the people of the
11 State; and that the encouragement, development, improvement, and
12 preservation of agriculture will result in a general benefit to the health and
13 welfare of the people of the State. In order for the agricultural industry to
14 survive in this State, farms will likely change, adopt new technologies, and
15 diversify into new products, which for some farms will mean increasing in
16 size. The General Assembly finds that agricultural activities are potentially
17 subject to lawsuits based on the theory of nuisance; and that these suits
18 encourage and could force the premature removal of the farmlands and other
19 farm resources from agricultural use. It is the purpose of this chapter to protect
20 reasonable agricultural activities conducted on the farm from nuisance
21 lawsuits.

1 § 5752. DEFINITIONS

2 ~~For the purpose of~~ As used in this chapter,:

3 (1) ~~“agricultural~~ Agricultural activity” means, but is not limited to:

4 ~~(1)(A)~~ the cultivation or other use of land for producing food, fiber,
5 Christmas trees, maple sap, or horticultural and orchard crops; the raising,
6 feeding, or management of domestic animals as defined in 6 V.S.A. § 1151 or
7 bees; the operation of greenhouses; the production of maple syrup; the on-site
8 storage, preparation, and sale of agricultural products principally produced on
9 the farm; and the on-site production of fuel or power from agricultural
10 products or wastes principally produced on the farm;

11 ~~(2)(B)~~ the preparation, tilling, fertilization, planting, protection,
12 irrigation, and harvesting of crops; the composting of material principally
13 produced by the farm or to be used at least in part on the farm; the ditching and
14 subsurface drainage of farm fields and the construction of farm ponds; the
15 handling of livestock wastes and by-products; and the on-site storage and
16 application of agricultural inputs, including lime, fertilizer, and pesticides;

17 ~~(3)(C)~~ “farming” as defined in 10 V.S.A. § 6001; and

18 ~~(4)(D)~~ “agricultural activities” as defined in 6 V.S.A. § 4802.

19 (2) “Generally accepted agricultural practices” mean:

20 (A) the requirements of 6 V.S.A. chapter 215, including permit
21 requirements or requirements of the Required Agricultural Practices;

1 (B) the requirements of the Agency of Agriculture, Food and
2 Markets' Vermont Rule for Control of Pesticides; and

3 (C) practices conducted in a manner consistent with proper and
4 accepted customs and standards followed by similar operators of agricultural
5 activities in the State.

6 § 5753. AGRICULTURAL ACTIVITIES; PROTECTION FROM
7 NUISANCE LAWSUITS

8 ~~(a)(1) Agricultural activities shall be entitled to a rebuttable presumption~~
9 ~~that the activity does not constitute a nuisance if the agricultural activity meets~~
10 ~~all of the following conditions:~~

11 ~~(A) it is conducted in conformity with federal, State, and local laws~~
12 ~~and regulations (including required agricultural practices);~~

13 ~~(B) it is consistent with good agricultural practices;~~

14 ~~(C) it is established prior to surrounding nonagricultural activities;~~

15 and

16 ~~(D) it has not significantly changed since the commencement of the~~
17 ~~prior surrounding nonagricultural activity.~~

18 ~~(2) The presumption that the agricultural activity does not constitute a~~
19 ~~nuisance may be rebutted by a showing that the activity has a substantial~~
20 ~~adverse effect on health, safety, or welfare, or has a noxious and significant~~
21 ~~interference with the use and enjoyment of the neighboring property No~~

1 agricultural activity shall be or become a nuisance or trespass when the activity
2 is conducted in accordance with generally accepted agricultural practices.

3 (b) ~~Nothing in this section shall be construed to limit the authority of State~~
4 ~~or local boards of health to abate nuisances affecting the public health~~ A
5 plaintiff alleging that an agricultural activity is a nuisance or trespass shall
6 have the burden of proving by a preponderance of the evidence that the
7 agricultural activity is not conducted in accordance with generally accepted
8 agricultural practices.

9 (c) The nuisance and trespass protection for an agricultural activity
10 provided for under subsection (a) of this section shall not apply whenever a
11 nuisance or trespass violation results from the negligent operation of an
12 agricultural activity.

13 § 5754. LIBERAL CONSTRUCTION; SEVERABILITY

14 (a) This chapter is remedial in nature and shall be liberally construed to
15 effectuate its purposes.

16 (b) An agricultural activity shall not lose the nuisance or trespass protection
17 under section 5753 of this title due to:

18 (1) a change of ownership or a cessation of operation, in whole or in
19 part, of not more than 10 years;

20 (2) a change of crops produced; or

1 (3) a change of a farming method or conversion of farming practices or
2 agricultural activities to other farming methods, practices, or agricultural
3 activities on a farm.

4 (c) If any provision of this chapter is held invalid, the invalidity does not
5 affect other provisions of this chapter that can be given effect without the
6 invalid provision, and for this purpose, the provisions of this chapter are
7 severable.

8 § 5755. REQUIRED MEDIATION PRIOR TO SUIT

9 (a) A person shall not bring a court action based on a claim of nuisance or
10 trespass arising from an agricultural activity unless the person and the operator
11 of the agricultural activity, at least once, attempt to resolve through mediation
12 the issue or dispute that the person has concerning operation of the agricultural
13 activity. The mediation shall be conducted according to the provisions of the
14 Uniform Mediation Act set forth in chapter 194 of this title.

15 (b) The parties to the mediation may agree upon the use of a mediator to
16 assist in the resolution of the agreed upon issue or dispute, and the parties shall
17 share the cost of the mediator. If the parties to the mediation are unable to
18 resolve the relevant issue or dispute through mediation, the parties may agree
19 to submit the issue or dispute to binding arbitration pursuant to chapter 192 of
20 this title and shall share the cost of the arbitration.

1 practices, including a silo, as “farming” is defined in 10 V.S.A. § 6001(22),~~but~~
2 ~~excludes a dwelling for human habitation.~~

3 (B) “Forestry operations” has the same meaning as in 10 V.S.A.
4 § 2602.

5 (C) “Farm employee housing” means housing owned or controlled by
6 the farm employer, located on the farm premises and provided for the
7 occupancy of a farm employee and the farm employee’s family or household
8 members for no payment other than the farm employee’s labor. Payment of
9 utility and fuel charges paid by a farm employee does not affect the
10 designation of housing provided as a benefit of farm employment. Farm
11 employee housing shall meet the U.S. Department of Labor standards for
12 housing of H-2A temporary agricultural employees.

13 (D) “Farm employer” means a person earning at least one-half of the
14 person’s annual gross income from the business of farming as that term is
15 defined in Section 1.175-3 of the regulations issued by the U.S. Department of
16 the Treasury under the U.S. Internal Revenue Code, as amended.

17 (3) A person shall notify a municipality of the intent to build a farm
18 structure and shall abide by setbacks approved by the Secretary of Agriculture,
19 Food and Markets. No municipal permit for a farm structure shall be required.

20 (4) This subsection does not prevent an appropriate municipal panel,
21 when issuing a decision on an application for land development over which the

1 panel otherwise has jurisdiction under this chapter, from imposing reasonable
2 conditions under subsection 4464(b) of this title to protect wildlife habitat;
3 threatened or endangered species; or other natural, historic, or scenic resources
4 and does not prevent the municipality from enforcing such conditions,
5 provided that the reasonable conditions do not restrict or regulate forestry
6 operations unrelated to land development.

7 (5) If a municipal bylaw or ordinance purports to regulate a practice
8 regulated under the required agricultural practices or to regulate a farm
9 structure, the owner or operator of a farm within the municipality may request
10 an opinion from the Secretary of Agriculture, Food and Markets as to whether
11 the municipal bylaw violates this subsection. If the Secretary of Agriculture,
12 Food and Markets determines that the municipal bylaw or ordinance does
13 regulate a required agricultural practice or a farm structure, farms within the
14 municipality shall not be required to comply with the municipal bylaw or
15 ordinance.

16 (6) When farm employee housing is unused by a farm employee, the
17 farm employer may rent the farm employee housing as a short-term rental
18 subject to the State laws for short-term rentals.

19 Sec. 6. 10 V.S.A. § 6081(t) is amended to read:

20 (t) No permit or permit amendment is required for the construction of
21 improvements for an accessory on-farm business for the storage or sale of

1 qualifying products or the other eligible enumerated products as defined in
2 24 V.S.A. § 4412(11)(A)(i)(I). No permit or permit amendment is required for
3 the construction of improvements for an accessory on-farm business for the
4 preparation or processing of qualifying products as defined in 24 V.S.A.
5 § 4412(11)(A)(i)(I), provided that ~~more than 50 percent~~ of the total annual
6 sales of the prepared or processed qualifying products that come from products
7 not produced on the farm where the business is located do not exceed
8 \$250,000.00 in annual sales. No permit or permit amendment is required for
9 the construction of improvements for an accessory on-farm business for
10 educational, recreations, or social events that feature agriculture practices or
11 qualifying products, as those terms are defined in 24 V.S.A.
12 § 4412(11)(A)(i)(II). This subsection shall not apply to the construction of
13 improvements related to hosting events or farm stays as part of an accessory
14 on-farm business as defined in 24 V.S.A. § 4412(11)(A)(i)(II).

15 * * * Use Value Appraisal * * *

16 Sec. 7. 32 V.S.A. § 3752(1) is amended to read:

17 (1) "Agricultural land" means any land, exclusive of any housesite, in
18 active use to grow hay or cultivated crops, pasture livestock, cultivate trees
19 bearing edible fruit, or produce an annual maple product, and that is 25 acres
20 or more in size, except as provided in this subdivision (~~1~~). Agricultural land
21 shall include buffer zones as defined and required in the Agency of

1 Agriculture, Food and Markets' Required Agricultural Practices rule adopted
2 under 6 V.S.A. chapter 215. There shall be a presumption that the land is used
3 for agricultural purposes if:

4 (A) it is owned by a farmer and is part of the overall farm unit;

5 (B) it is used by a farmer as part of the farmer's operation under
6 written lease for at least three years; or

7 (C) it has produced an annual gross income from the sale of farm
8 crops or the equivalent value of donated farm crops in one of two, or three of
9 the five, calendar years preceding of at least:

10 (i) \$2,000.00 for parcels of up to 25 acres; ~~and~~

11 (ii) \$75.00 per acre for each acre over 25, with the total income
12 required not to exceed \$5,000.00.

13 (iii) Exceptions to these income requirements may be made in
14 cases of orchard lands planted to fruit-producing trees, bushes, or vines that are
15 not yet of bearing age. As used in this section, the term "farm crops" also
16 includes animal fiber, cider, wine, and cheese, produced on the enrolled land or
17 on a housesite adjoining the enrolled land, from agricultural products grown on
18 the enrolled land.

19 * * * Vermont Income Tax * * *

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(v) the amount of any federal deduction or credit that the taxpayer would have been allowed for the cultivation, testing, processing, or sale of cannabis or cannabis products as authorized under 7 V.S.A. chapter 33 or 37, but for 26 U.S.C. § 280E; ~~and~~

(vi) the amount of interest paid by a qualified resident taxpayer during the taxable year on a qualified education loan for the costs of attendance at an eligible educational institution; ~~and~~

(vii) the amount of any net farm profit, provided the taxpayer's net farm profit during the taxable year did not exceed \$10,000.00; and

(viii) notwithstanding subdivision (ii) of this subdivision (21)(B), adjusted net capital gain income from the sale of real estate that is part of a farming operation, provided:

(I) the buyer continued using the real estate as part of a farming operation and is related to the seller by blood, marriage, civil union, or adoption; or

(II) the buyer was an employee of the farming operation for a minimum of 10 years prior to the sale; and

* * *

* * * Property Transfer Tax * * *

1 Sec. 9. 32 V.S.A. § 9603 is amended to read:

2 § 9603. EXEMPTIONS

3 The following transfers are exempt from the tax imposed by this chapter:

4 * * *

5 (5) Transfers between two spouses, or parent and child or child's
6 spouse, or grandparent and grandchild or grandchild's spouse, without actual
7 consideration therefor; and also transfers in trust or by decree of court to the
8 extent of the benefit to the donor or one or more of the related persons named
9 in this subdivision; and transfers from a trust named in this subdivision
10 conveying or releasing the property free of trust as between those related
11 persons and without actual consideration therefor.

12 * * *

13 (29) Transfers of property that is part of a farming operation, provided:

14 (A) the transferee will continue using the real estate as part of a
15 farming operation and is related to the seller by blood, marriage, civil union, or
16 adoption; or

17 (B) the transferee was an employee of the farming operation for a
18 minimum of 10 years prior to the transfer.

19 * * * Effective Dates * * *

1 Sec. 10. EFFECTIVE DATES

2 This act shall take effect on July 1, 2025, except that, notwithstanding 1
3 V.S.A. § 214, Sec. 8 (reductions to taxable income) shall take effect
4 retroactively on January 1, 2025 and shall apply to taxable years beginning on
5 and after January 1, 2025.