

Dr. Dave, my state is considering legislation that would take away my county's right to regulate large livestock farms. Our governor says this is necessary to prevent our losing agricultural jobs to states that allow such enterprise. Is that true? Do agricultural communities have to give up local control to be economically competitive?

A. A little background may be in order here. So-called "right to farm" laws first appeared in the 1970s. As the suburbs expanded into farmland, relocated city folk were distressed to discover that farming had some inconvenient aspects, like noise, odor, and slow-moving machinery.^[1] They began to file common-law nuisance suits. To protect existing farmers, local and state governments enacted laws that exempted existing farms from such suits.^[2] By the 1990s, virtually all states and some local governments had approved this kind of exemption.

The original right-to-farm laws were intended to protect pre-existing agricultural operations that conformed to "generally accepted agricultural practices". These were traditional family farms, where a small amount of waste was generated and all or most of it was recycled onto the land and where the farm did much of its business, both buying and selling, locally. The initial laws focused on nuisance suits by neighbors. Localities retained their traditional land use planning authority.

In the 1980s and 1990s, a new kind of agricultural operation emerged: large, concentrated livestock enterprises. They differed from traditional farms in at least three respects. First, they were immense, housing thousands and even tens of thousands of animals rather than a few dozen. Second, they were absentee rather than locally owned. Third, the animal density produced animal wastes that exceeded the capacity of nearby land to recycle the nutrients.

Many argued that these new enterprises were industries, not farms, and therefore were not protected by right-to-farm laws.^[3] Some, like Oklahoma, Wyoming, Tennessee and Kansas responded by modifying the laws so that they specifically covered large feedlots. Nine states granted immunity from nuisance suits only within agricultural districts, defined by county administrators.^[4] Within these districts, farmers could be exempt from nuisance suits (and often receive favorable tax treatment) if they accepted certain restrictions on development of their land.

A central feature of traditional right-to-farm legislation was that the change in circumstances must have occurred outside the farm, not in the farm's operations. In other words, if a housing development was established near a farm, the farm was protected. If on the other hand, the farm itself dramatically changed its size or operations, right-to-farm protection in the form of immunity from nuisance suits may be lost.

The extension of right-to-farm act coverage to large concentrated feedlots withstood legal challenges until 1998, when the Iowa Supreme Court overturned that state's law.^[5] The Court argued that large feedlots demonstrably reduced both the quality of life and the property values of the area. By granting them immunity from nuisance suits, the state was in effect giving these enterprises the right to take private property (i.e. to diminish its value) for a non-public use.^[6] The legislature had exceeded its authority "by authorizing the use of property in such a way as to infringe on the rights of others by allowing the creation of a nuisance without the payment of a just compensation."

The U.S. Supreme Court declined to review the decision, bringing the constitutionality of right-to-farm laws into question.

Subsequent state court decisions have been mixed.^[7]

One recent case specifically on the takings aspect of right-to-farm laws has been appealed to the U.S. Supreme Court. The case involved Kentucky Bluegrass farmers in northern Idaho who burn their grass fields after harvest. Area residents brought suit against the farmers for noxious fumes. In 2002, while the case was in court, the Idaho legislature passed a law immunizing the farmers from any liability for farming activity. A lower court found in favor of the plaintiffs on the grounds that the immunity from nuisance suits was a taking, with reference to the *Bormann* decision in Iowa. The Idaho Supreme Court overturned that decision. The U.S. Supreme Court has not yet decided whether to hear the case.^[8]

In some cases, when courts found provisions of right-to-farm laws unconstitutional, state legislatures modified the law to achieve the same results. The best example may be found in Michigan. When a state

court found that Michigan's 1981 Right to Farm Act did not protect a farmer who converted a vacant dairy barn into a hog operation, the legislature passed amendments to clarify that the act was intended to protect farming operations regardless of changes in size, ownership or type of operation.^[9] When courts held there was no immunity from nuisance suits on land not zoned for farming, the legislature amended the act to cover expansion of operations or a complete change in the farming operations on any land, regardless of zoning, as long as farmers are in compliance with state regulations.^[10] The second revision also expressly prohibits local governments from enacting regulations more stringent than those established at the state level.^[11]

Right-to-farm laws do not inherently strip local governments of the right to regulate large agricultural enterprises. Minnesota, for example, has three right-to-farm laws, but none preempts local zoning. But more and more states have restricted or pre-empted local control. Michigan's right-to-farm law, for example, preempts local zoning.

Recently several states have proposed establishing state-level boards with the capacity of reviewing and overturning local laws affecting agriculture. In 2004, Wisconsin enacted such a law. The governors of Pennsylvania and Minnesota have proposed such boards.^[12]

Many governors, and some farm groups justify stripping communities of their traditional right to regulate enterprises with adverse local health impacts as part of an economic development strategy. They argue that that only large operations can be economically competitive, that factory farms boost employment and benefit the regional and state economy.

It is certainly true that large livestock operations have transformed the face of U.S. agriculture. Over the last 20 years, notes USDA, "The structure of animal agriculture has changed dramatically... Small- and medium-sized livestock operations have been replaced by large operations at a steady rate. The total number of livestock has remained relatively unchanged, but more livestock are kept in confinement."^[13]

In other words, we don't have more cattle or hogs. We have the same number of cattle and hogs living in higher density populations. For example, the number of hog farms plummeted from 900,000 in 1970 to 139,000 in 1997 while the amount of pork raised remained relatively constant. According to the USDA, operations with more than 5,000 hogs now account for three-quarters of U.S. pork even while the average hog farm remains small with fewer than 100 hogs.

However, the empirical evidence does not support the argument that large-scale operations are more efficient or more beneficial to the local and regional economy. Dozens of studies document that fact that small animal operations can be at least as efficient as large ones. Comparing the technical efficiency of Ontario and New York dairy farmers, researchers at the University of Saskatchewan found "no correlation between farm size and estimated technical efficiency."^[14]

A Purdue University study compared large and small hog raising operations. Its conclusion? "Size by itself contributed only about \$1.50 to \$2.00 per hundredweight to lower costs..."^[15] By comparison, small hog farmers in Minnesota have added \$5 to \$6 per hundredweight by marketing as a group and receiving a quality premium as a result.^[16]

Colorado College economist William Weida argues that a comparative efficiency study must take into account the full production costs, but most do not. He argues, persuasively, that any cost gains from large animal feeding operations over small ones are obtained from requiring the community to pay the costs of waste disposal.^[17] If the concentrated livestock operation had to pay the real costs of huge concentrated pools of manure their cost of production would be far higher than that of family farm enterprises.

New evidence continues to appear about the nuisance and dangers of confined animal feeding operations, including noxious emissions and groundwater contaminations. Most recently, researchers at Johns Hopkins University found antibiotic-resistant bacteria in air samples collected from confined hog feeding operations.^[18] They believe that workers in the facilities are at greatest risk for exposure, and that these workers may also spread the drug-resistant bacteria to their families and the broader community. The study raises questions about the spread of drug-resistant bacteria through ventilation fans and manure.

Some states that originally welcomed confined animal feeding operations have determined that the gains from large-scale animal feeding operations come at too high a public cost. The original industrial hog

farming state, North Carolina, enacted a two-year moratorium on the creation of new hog farms or the expansion of existing farms in 1997. The moratorium has been extended every time it nears expiration, most recently in 2003. Oklahoma imposed a two-year moratorium in 1998, which was lifted only after minimum setback and other siting requirements were added to state law.

Some argue that large-scale operations deter new farmers. The start-up costs for a dairy cow confinement system, for example, are twice as much per cow as for a grazing farm. A hog confinement system costs three times as much per-pig as a hoop-house system.^[19] Indeed, University of Missouri agricultural economist John Ikerd argues that the very productive capacities of rural people and communities are degraded by large-scale operations. “When we replace independent, family hog farmers with hog factories we are degrading the most valuable resource rural areas have to support future development – rural people.”^[20]

A growing number of empirical studies have found that large-scale agriculture actually undermines local economies. One reason is that large operations tend to buy their goods and services either from within their own corporation or from remote suppliers.

A 2002 University of Minnesota analysis of the economic impacts of swine operations and concluded: “The larger operations provide less in economic benefits to the local county than a larger number of smaller operations.”^[21] A 1994 study by the same University found that farms with an annual gross income of \$100,000 made 95 percent of their purchases locally; those with gross incomes over \$900,000 spent less than 20 percent locally.^[22] Illinois State University economists found that economic growth rates were 55 percent higher in areas with small- and medium-size hog operations than in areas with large operations, even though the areas’ growth rates had been comparable before the addition of large operations.^[23]

^[1] American Farmland Trust, *Right-to-Farm Laws: History and Future*. See <http://www.farmland.org/> for information on right to farm laws and efforts to preserve family farms and diversified rural economies.

^[2] North Carolina’s 1979 Right-to-Farm law is typical: “It is the declared policy of the State to conserve and protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations often become subject to nuisance suits. As a result, agricultural operations are sometimes forced to cease operations. Many others are discouraged from making investments in farm improvements. It is the purpose of this article to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed a nuisance.”

^[3] The operators of these large enterprises did identify themselves as industries originally. In the 1980s, the major promotional group for these enterprises called itself The Animal Industry Foundation. As Colorado College economist William Weida notes, “Later, when the implication of this name became clearer, this title was replaced with the Animal Agriculture Alliance and all web sites listing the original name were wiped from existence.” See, William Weida. *Considering Rationales for Factory Farming*.

^[4] These states are Iowa, Delaware, Illinois, Maryland, Minnesota, Ohio, Oregon, Virginia and Wisconsin.

^[5] *Bormann v. Board of Supervisors*, 584 N.W. 2d.309 (Iowa 1998). The case stemmed from a county approving the designation of a section as an agricultural area and therefore immune from nuisance suits. Neighboring landowners filed suit to have the statute declared unconstitutional. The district court found the board’s action to be arbitrary and capricious, but otherwise rejected the neighbors’ arguments. The state Supreme Court overruled the district court.

^[6] The Fifth Amendment states that no person shall “be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.” The Fourteenth Amendment extends this to the states.

^[7] The Texas Supreme Court held that nuisance suits cannot be brought against operations that have been in existence and remained substantially unchanged for one year. The defendants confined sheep feeding

operation did not preexist the plaintiff's ownership of the neighboring property (also a farm), but the complaint was not filed until 16 months after the new operation began. [Holubec v. Brandenberger](#), 111 S.W.3d 32 (Texas 2003). Minnesota's high court ruled that the law's statute of limitations is not valid if the operation was a nuisance at its establishment. It also ruled that compliance with "generally accepted agricultural practices" does not constitute a prima facie defense against nuisance suits. [Wendinger v. Forst Farms, Inc.](#), 662 N.W. 2d. 546 (Minn. Ct. App. 2003). Vermont's Supreme Court ruled that expansion of operations at an apple orchard were not immune from a nuisance suit brought by neighbors in residence before the expansion. *Trickett v. Ochs*, 838 A.2d 66 (Vt. 2003).

[8] [Moon v. North Idaho Farmers Association](#), 96 P.3d 637 (2004).

[9] For more information, see Steven J. Laurent, "Michigan's Right to Farm Act: Have Revisions Gone Too Far?" *Michigan State University Law Review*, i.213, 2002.

[10] *Ibid.* The 1999 revision includes farms that have continued to operate as a lawful non-conforming use after a zoning change.

[11] The amendment states in part: "[I]t is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act. Except as otherwise provided in this section, a local unit of government shall not enact, maintain or enforce an ordinance, regulation or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act." Michigan Comp. Laws Ann. 286.474(6).

[12] In Pennsylvania, the ACRE (Agriculture, Communities and Rural Environment) proposal would create a review board consisting of the Dean of Penn State's School of Agricultural Sciences, and the Secretaries of Agriculture, Environmental Protection, and Community and Economic Development, and one additional member appointed by the governor. Rather than challenging local ordinances in court, corporations would present their cases to the review board, which would have the power to overrule local ordinances. Rulings could not be appealed in the court system. In Minnesota, four farm groups put forward an alternative proposal that they believe would expand the state's livestock sector through support for small- and medium-size livestock farms. ([Click here to read a summary or download a copy of the full report.](#))

[13] Cited in "[Knee deep in feedlot feuds](#)", *The Fed Gazette*, Federal Reserve Bank of Minneapolis, July 2001.

[14] Morteza Haghiri, James F. Nolan and Kien C. Tran, "Assessing the impact of economic liberalization across countries: a comparison of dairy industry efficiency in Canada and the U.S.", *Applied Economics*, 36(11), June 20, 2004.

[15] See, [Staying Competitive in Today's Pork Business!](#)

[16] For more information on strategies and models for small livestock alternatives, see the [Land Stewardship Project](#).

[17] William J. Weida, [Considering Rationales for Factory Farming](#), March 5, 2004.

[18] [Johns Hopkins School of Public Health](#), December 3, 2004. The use of antibiotics in animal feeding operations is a well-established source of antibiotic-resistant bacteria. See [U.S. News and World Report](#), December 2, 2004.

[19] Citizen Task Force on Livestock Farmers and Rural Communities, [Creating a Bright Future for Livestock Farmers in Minnesota](#), September 2004.

[20] John Ikerd, [Large Scale Corporate Hog Operations: Why rural communities are concerned and what they should do.](#)

[21] William Lazarus, Diego Platas, George Morse and Steffanie Guess-Murphy, "Evaluating the Economic Impacts of an Evolving Swine Industry: The Importance of Regional Size and Structure", *Review of Agricultural Economics*, 24(2) December 2002.

[22] John W. Chism and Richard A. Levins, "Farm Spending and Local Selling: How do they match up?" *Minnesota Agricultural Economist*, Spring 2004.

[23] Miguel Gomez and Liying Zhang, [*Impacts of Concentration in Hog Production on Economic Growth in Rural Illinois*](#), Presented to the American Economics Association annual meeting in Tampa, Florida, July 2000.

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