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AN EMPIRICAL ANALYSIS OF AGRICULTURAL PRESERVATION STATUTES IN NEW YORK, NEBRASKA, AND MINNESOTA

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Abstract: States passed agricultural preservation statutes in part to protect their agricultural heritage. Some scholars worry that right-to-farm statutes have not succeeded in achieving this goal. The agricultural preservation statutes of New York, Nebraska, and Minnesota show three different strategies toward agricultural preservation, all of which take different stances on the protections extended to small and large farms. Despite the structural differences among the states' statutory approach to agricultural preservation, all three experienced similar agricultural demographic shifts since the 1980s—the number of large and small farms has increased while the number of medium-sized farms has decreased. The similarity in demographic trends suggests that none of the statutes are effective. Legislatures may be able to redirect their agricultural preservation statutes by empowering agricultural advisory boards to consider not only the soundness of farming practices but also the cultural and environmental value of individual farms.

INTRODUCTION

Since Thomas Jefferson's conception of a society of middle class farmers, the idea of the small farm has been fixed in America as an essential part of its heritage and economy.¹ Responding to population shifts after World War II, every state passed a right-to-farm statute to maintain the economic and cultural importance of farms.² Right-to-farm statutes³ assist farmers in two ways—they offer protection from

* Executive Note Editor, BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW, 2011–12.

¹ William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation's Tax Dollars*, 28 STAN. ENVTL. L.J. 213, 216 (2009); Jacqueline P. Hand, *Right-to-Farm Laws: Breaking New Ground in the Preservation of Farmland*, 45 U. PITT. L. REV. 289, 289 (1984).

² Terrence J. Centner, *Governments and Unconstitutional Takings: When Do Right-to-Farm Laws Go Too Far?* 33 B.C. ENVTL. AFF. L. REV. 87, 87, 88 (2006); Hand, *supra* note 1, at 290.

³ Agricultural preservation statutes, as used in this Note, refer to any statute designed to assist farmers. These statutes include not only right-to-farm statutes, but also tax breaks for agricultural zoning, conservation purchase programs, and limitations on corporate farming. Cf. Sam Sheronick, Note, *The Accretion of Cement and Steel onto Prime Iowa Farmland:*

nuisance suits and prohibit municipalities from passing burdensome zoning laws that would restrict farming operations.⁴ States passed most of these right-to-farm statutes in the 1970s and 1980s.⁵ Since then, many scholars have questioned the effectiveness and purpose of right-to-farm statutes.⁶ Specifically, right-to-farm statutes can shield businesses from environmental protection laws without offering substantial benefits to economic growth, conservation of open spaces, or cultural preservation.⁷

In response to such criticism, scholars noted that protections for small farms tend to further the goals of right-to-farm statutes and agricultural preservation more broadly, whereas protections for large farms may be unnecessary subsidies.⁸ Perhaps the problem with right-to-farm statutes is that they do not adequately distinguish between plaintiffs (residents versus developers) and defendants (large commercial farms versus small family farms).⁹ Nevertheless, several states implemented right-to-farm statutes in the hopes of promoting environmental interests and small family farms.¹⁰

The agricultural preservation statutes in New York, Nebraska, and Minnesota provide examples of different strategies for protecting all

A Proposal for a Comprehensive State Agricultural Zoning Plan, 76 IOWA L. REV. 583, 585 n.21, 587–89 (1991) (discussing the different approaches to agricultural preservation as including right-to-farm statutes, zoning, and tax benefits).

⁴ See Hand, *supra* note 1, at 295, 299.

⁵ See Centner, *supra* note 2, at 94.

⁶ See, e.g., Centner, *supra* note 2, at 145–46; Alexander A. Reinert, Note, *The Right to Farm: Hog-Tied and Nuisance-Bound*, 73 N.Y.U. L. REV. 1694, 1718 (1998). Alexander Reinert was a student at N.Y.U. at the time he wrote this note. *Id.* at 1694. He is now an associate professor of law at the Benjamin N. Cardozo School of Law at Yeshiva University. Profile: Alexander Reinert, CARDOZO LAW, <http://www.cardozo.yu.edu/MemberContentDisplay.aspx?ccmd=ContentDisplay&ucmd=UserDisplay&userid=10688> (last visited Jan. 12, 2012).

⁷ See Reinert, *supra* note 6, at 1735–38; see also Neil D. Hamilton, *Right-to-Farm Laws Reconsidered: Ten Reasons Why Legislative Efforts to Resolve Agricultural Nuisances May Be Ineffective*, 3 DRAKE J. AGRIC. L. 103, 118 (1998) (arguing that right-to-farm statutes must be more comprehensive to be effective and fair).

⁸ See, e.g., Matt Chester, Note, *Anticorporate Farming Legislation: Constitutionality and Economic Policy*, 9 DRAKE J. AGRIC. L. 79, 82 (2004); Reinert, *supra* note 6, at 1722, 1736–37; see also Tiffany Dowell, Comment, *Daddy Won't Sell the Farm: Drafting Right to Farm Statutes to Protect Small Family Producers*, 18 SAN JOAQUIN AGRIC. L. REV. 127, 152–53 (2008–09) (suggesting that nuisance protections in right-to-farm statutes are not strong enough to ensure preservation of family farms).

⁹ Reinert, *supra* note 6, at 1736.

¹⁰ See, e.g., NEB. CONST. art. XII, § 8 (1982) (banning corporate ownership of farms in Nebraska); MINN. STAT. § 561.19 (2010) (defining Minnesota's right-to-farm law and excluding large concentrated animal feeding operations); N.Y. AGRIC. & MKTS. LAW § 300 (McKinney 2011) (stating the purpose of New York's agricultural preservation laws).

farms and specifically small farms.¹¹ New York has a standard right-to-farm statute that provides farmers with protection from nuisance suits and interference from municipalities.¹² Nebraska banned corporate farming from 1982 to 2006 through a constitutional amendment.¹³ Minnesota has both restricted corporate farming and removed nuisance protections for certain concentrated animal feeding operations (CAFOs).¹⁴ Clearly, the states have different perspectives on how to protect small farms.¹⁵

Empirical analysis indicates that despite their different approaches to agricultural preservation, all three states show similar changes in farming trends.¹⁶ For example, in all three the number of large and

¹¹ See NEB. CONST. art. XII; § 8 (1982); MINN. STAT. § 561.19; N.Y. AGRIC. & MKTS. LAW § 300.

¹² N.Y. AGRIC. & MKTS. LAW §§ 305-a, 308.

¹³ NEB. CONST. art. XII, § 8 (1982); see *Jones v. Gale*, 470 F.3d 1261, 1271 (8th Cir. 2006) (striking down the amendment as unconstitutional under the dormant commerce clause).

¹⁴ MINN. STAT. §§ 500.24, 561.19.

¹⁵ See NEB. CONST. art. XII, § 8 (1982); MINN. STAT. § 561.19; N.Y. AGRIC. & MKTS. LAW § 300.

¹⁶ See U.S. DEP'T OF AGRIC., AC-07-A-23, 2007 CENSUS OF AGRICULTURE: MINNESOTA STATE AND COUNTY DATA 10, 17 (2009) [hereinafter 2007 MINN. DATA]; U.S. DEP'T OF AGRIC., AC-07-A-27, 2007 CENSUS OF AGRICULTURE: NEBRASKA STATE AND COUNTY DATA 10, 17 (2009) [hereinafter 2007 NEB. DATA]; U.S. DEP'T OF AGRIC., AC-07-A-32, 2007 CENSUS OF AGRICULTURE: NEW YORK STATE AND COUNTY DATA 10, 17 (2009) [hereinafter 2007 N.Y. DATA]; U.S. DEP'T OF AGRIC., AC-02-A-23, 2002 CENSUS OF AGRICULTURE: MINNESOTA STATE AND COUNTY DATA 9, 16 (2004) [hereinafter 2002 MINN. DATA]; U.S. DEP'T OF AGRIC., AC-02-A-27, 2002 CENSUS OF AGRICULTURE: NEBRASKA STATE AND COUNTY DATA 9, 16 (2004) [hereinafter 2002 NEB. DATA]; U.S. DEP'T OF AGRIC., AC-02-A-32, 2002 CENSUS OF AGRICULTURE: NEW YORK STATE AND COUNTY DATA 9, 16 (2004) [hereinafter 2002 N.Y. DATA]; U.S. DEP'T OF AGRIC., AC97-A-23, 1997 CENSUS OF AGRICULTURE: MINNESOTA STATE AND COUNTY DATA 12, 20 (1999) [hereinafter 1997 MINN. DATA]; U.S. DEP'T OF AGRIC., AC97-A-27, 1997 CENSUS OF AGRICULTURE: NEBRASKA STATE AND COUNTY DATA 12, 20 (1999) [hereinafter 1997 NEB. DATA]; U.S. DEP'T OF AGRIC., AC97-A-32, 1997 CENSUS OF AGRICULTURE: NEW YORK STATE AND COUNTY DATA 12, 20 (1999) [hereinafter 1997 N.Y. DATA]; U.S. DEP'T OF AGRIC., AC92-A-23, 1992 CENSUS OF AGRICULTURE: MINNESOTA STATE AND COUNTY DATA 10, 18 (1994) [hereinafter 1992 MINN. DATA]; U.S. DEP'T OF AGRIC., AC92-A-27, 1992 CENSUS OF AGRICULTURE: NEBRASKA STATE AND COUNTY DATA 10, 18 (1994) [hereinafter 1992 NEB. DATA]; U.S. DEP'T OF AGRIC., AC92-A-32, 1992 CENSUS OF AGRICULTURE: NEW YORK STATE AND COUNTY DATA 10, 18 (1994) [hereinafter 1992 N.Y. DATA]. Between 1997 and 2002, the Department of Agriculture slightly changed the labeling for farming data by economic size. In 1997, the Department of Agriculture gave a statistic for the "market value of agricultural products sold and direct sales." See 1997 MINN. DATA, *supra*, at 12. In 2002, the corresponding statistical section was named "market value of agricultural products sold." See 2002 MINN. DATA, *supra*, at 9. In the introduction section of the report, the Department of Agriculture explains that it changed some of its data to make reporting easier for respondents and provide more detailed information to readers. See 2002 MINN. DATA, *supra*, at x. It appears that there is no differ-

small farms has increased, while the number of medium-sized farms has decreased.¹⁷ Similarly, the number of farms with very high and low gross sales has increased in all three states, while the number of farms with moderate gross sales has decreased.¹⁸ Thus, despite their different approaches, all three states have experienced similar changes in farming demographics.¹⁹

Part I of this Note provides an overview of the design, function, and criticisms of right-to-farm-statutes. Part II discusses the specific statutes and cases that govern agricultural preservation in New York, Nebraska, and Minnesota. Part III offers a visual and numeric comparison of demographic shifts in the three states between 1987 and 2007. Finally, Part IV analyzes these trends and suggests that legislatures should pass statutes that bolster medium-sized farms, rather than punishing large or corporate farms. It further argues that legislatures should delegate authority to agricultural advisory councils to favor the farming practices of small farms.

I. DESIGN, USES, AND LIMITATIONS OF RIGHT-TO-FARM STATUTES

A. *Development and Use of Right-to-Farm Statutes*

Most states passed right-to-farm statutes in the late 1970s and early 1980s in response to population shifts in the American countryside after World War II.²⁰ During this period, people moved out of cities and into suburban and exurban areas.²¹ The growing suburbs caused developers to convert about 3 million acres of farm land for residential purposes each year.²² Through right-to-farm statutes, states sought to

ence between the statistics in each case, despite the labeling change. *Compare id.* at 9, with 1997 MINN. DATA, *supra*, at 12.

¹⁷ 2007 MINN. DATA, *supra* note 16, at 10; 2007 NEB. DATA, *supra* note 16, at 10; 2007 N.Y. DATA, *supra* note 16, at 10; 2002 MINN. DATA, *supra* note 16, at 9; 2002 NEB. DATA, *supra* note 16, at 9; 2002 N.Y. DATA, *supra* note 16, at 9; 1997 MINN. DATA, *supra* note 16, at 12; 1997 NEB. DATA, *supra* note 16, at 12; 1997 N.Y. DATA, *supra* note 16, at 12; 1992 MINN. DATA, *supra* note 16, at 10; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 10.

¹⁸ 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁹ *Compare* 2007 MINN. DATA, *supra* note 16, at 17, and 2007 NEB. DATA, *supra* note 16, at 17, and 2007 N.Y. DATA, *supra* note 16, at 17, with MINN. 1992 DATA, *supra* note 16, at 18, and 1992 NEB. DATA, *supra* note 16, at 18, and 1992 N.Y. DATA, *supra* note 16, at 18.

²⁰ Hand, *supra* note 1, at 290; Reinert, *supra* note 6, at 1696.

²¹ Hand, *supra* note 1, at 290.

²² *Id.* at 289.

slow the rate of land conversion by protecting farmers from nuisance and zoning laws.²³ They reasoned that nuisance suits and zoning laws could make farming unprofitable.²⁴ Early writings on right-to-farm statutes questioned their constitutional soundness but were hesitantly optimistic that such statutes could preserve farmland.²⁵

Right-to-farm statutes typically protect farmers in two ways: (1) by offering protection from nuisance suits, and (2) by limiting the authority of local governments to pass laws that inhibit farming.²⁶ Typically, nuisance protection varies from state to state.²⁷ Some states protect farmers if their nuisance-causing activities have priority in time—the “coming to the nuisance” affirmative defense.²⁸ Other states, such as Minnesota, disqualify potential nuisance claims by imposing a rather brief statute of limitations.²⁹ These states, however, generally allow nuisance claims arising from the farmer’s negligence.³⁰ Bans on nuisance claims provide the first line of protection to farmers.³¹ They are often more effective in the early stages of land conversion projects because of the time it takes for new suburbs to develop sufficient political clout to alter zoning regulations.³²

Restrictions on unfavorable zoning laws are the second form of protection offered by right-to-farm statutes.³³ Some states restrict municipalities from passing laws that limit farm use.³⁴ For example, a town in New York could not pass zoning laws that would limit a farmer’s ability to construct mobile homes for migrant workers.³⁵ Conversely, a state may encourage agricultural zoning to preserve farms.³⁶ Agricultural zoning offers the added advantage of separating land by use.³⁷ Some scholars fear that differences in cultural expectations concerning land

²³ See Centner, *supra* note 2, at 88; Hand, *supra* note 1, at 295.

²⁴ See Reinert, *supra* note 6, at 1697, 1704 n.66.

²⁵ See Hand, *supra* note 1, at 332, 347, 349–50.

²⁶ See Centner, *supra* note 2, at 88; Hand, *supra* note 1, at 295.

²⁷ See Reinert, *supra* note 6, at 1695.

²⁸ See Hamilton, *supra* note 7, at 106; Hand, *supra* note 1, at 306–07.

²⁹ See MINN. STAT. § 561.19 (2010); Kuhl v. Halquist, No. A05-2097, 2006 Minn. App. Unpub. LEXIS 1123, at *15–17 (Minn. Ct. App. Oct. 3, 2006).

³⁰ See Reinert, *supra* note 6, at 1707.

³¹ See *id.* at 1697.

³² See *id.*

³³ See *id.* at 1703.

³⁴ *Id.* at 1705; see also N.Y. AGRIC. & MKTS. LAW § 305-a (McKinney 2011) (forbidding municipalities from “unreasonably restrict[ing] . . . farm operations”).

³⁵ Town of Lysander v. Hafner, 759 N.E.2d 356, 359 (N.Y. 2001).

³⁶ See, e.g., N.Y. AGRIC. & MKTS. LAW §§ 304–305 (discussing the use of tax incentives in agricultural zoning).

³⁷ See *id.*

use cause many of the conflicts between established farming communities and new suburban residents.³⁸ Separating land by use can minimize cultural conflicts between farmers and new residents before either party experiences harm.³⁹

Some states also use other techniques to encourage agricultural preservation.⁴⁰ Agricultural preservation statutes include not only right-to-farm laws but also tax incentives, development rights purchasing programs, and other laws designed primarily to protect farmland as open space.⁴¹ To illustrate, both Massachusetts and New York purchase conservation easements that restrict future development of land.⁴² States may also reduce assessments on farm land to decrease property taxes.⁴³ Tax breaks and purchasing programs, like right-to-farm statutes, attempt to preserve farmland and thus are closely linked to right-to-farm statutes.⁴⁴ Nevertheless, this Note focuses on different applications of right-to-farm statutes.

B. *The Limitations and Controversies of Right-to-Farm Statutes*

Despite right-to-farm statutes' purpose of protecting traditional economies, cultural values, open spaces, and the environment, many scholars criticize their design and implementation.⁴⁵ Scholars are concerned that right-to-farm laws create loopholes for agribusiness to skirt environmental laws.⁴⁶ For example, scholars worry that right-to-farm laws allow CAFOs, especially hog farms, to avoid the Clean Water Act (CWA) and dump excess phosphorus into local rivers.⁴⁷ In response to claims of CWA violations, the Environmental Protection Agency (EPA)

³⁸ See, e.g., Dowell, *supra* note 8, at 127–28.

³⁹ See *id.*

⁴⁰ Reinert, *supra* note 6, at 1695.

⁴¹ *Id.*; cf. Sheronick, *supra* note 3 (describing methods of agricultural preservation).

⁴² Sean F. Nolon & Cozata Solloway, Comment, *Preserving Our Heritage: Tools to Cultivate Agricultural Preservation in New York State*, 17 PACE L. REV. 591, 600, 605–06 (1997); *Farmland Protection Program*, N.Y. STATE DEP'T OF AGRIC. & MKTS., <http://www.agriculture.ny.gov/> (search for "Farmland Protection Program" then follow "New York State Department of Agriculture and Markets" hyperlink) (last visited Jan. 12, 2012).

⁴³ See N.Y. AGRIC. & MKTS. LAW § 305 (McKinney 2011); Reinert, *supra* note 6, at 1695.

⁴⁴ See N.Y. AGRIC. & MKTS. LAW § 300 (noting that the overall purpose of its agricultural preservation statutes applies to both right-to-farm statutes and development rights purchasing programs); see Reinert, *supra* note 6, at 1695.

⁴⁵ See, e.g., Centner, *supra* note 2, at 141–42; Joshua M. Duke & Scott A. Malcom, *Legal Risk in Agriculture: Right-to-Farm Laws and Institutional Change*, 75 AGRIC. SYS. 295, 296–97 (2003); Alan J. Knauf, *The Southview Farm Case: A Giant Step to End Special Treatment for Agriculture Under Environmental Laws*, 5 ALBANY L. ENVTL. OUTLOOK 2, 2–3 (2000).

⁴⁶ See Centner, *supra* note 2, at 92; Reinert, *supra* note 6, at 1736.

⁴⁷ See Centner, *supra* note 2, at 92.

moved to include these farms as point sources within the statute.⁴⁸ In so doing, the EPA subjected CAFOs to stricter limits on effluent discharge.⁴⁹ Some believe that despite EPA's efforts, CWA violations persist because right-to-farm statutes allow, and even promote, CAFOs that cause significant land deterioration and environmental damage.⁵⁰ One commentator argues that right-to-farm statutes offer insufficient protection from nuisance suits, particularly for small farms, and therefore should be strengthened.⁵¹ The fear that environmental damage outweighs the societal benefits of right-to-farm statutes remains a powerful criticism.⁵²

Beyond their potential environmental costs, right-to-farm statutes may also be ineffective.⁵³ Starting in the early 1980s, scholars began to investigate the power of right-to-farm laws and whether they would reduce conflicts over land use.⁵⁴ By the 1990s some scholars, noting that the development of right-to-farm statutes appeared ineffective and inequitable, questioned why states did not create a comprehensive system.⁵⁵ Protecting farmers from nuisance suits might encourage them to act inefficiently, thereby creating problems for the community.⁵⁶ Such inefficiencies appear because of right-to-farm statutes' lack of clarity which, if remedied by more explicit regulations, could promote bargaining between farmers and residents.⁵⁷

⁴⁸ See *id.* Point sources are defined in the CWA as "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14) (2006).

⁴⁹ See 33 U.S.C. § 1342(a) (defining the requirements for regulation of point sources in the CWA); see also Terrence J. Centner, *Challenging NPDES Permits Granted Without Public Participation*, 38 B.C. ENVTL. AFF. L. REV. 1, 5 (2010) (discussing how the EPA changed the regulations of CAFOs in the CWA as a result of public participation).

⁵⁰ Centner, *supra* note 2, at 92; see Hamilton, *supra* note 7, at 109–10; Knauf, *supra* note 45, at 8.

⁵¹ See Dowell, *supra* note 8, at 152–53..

⁵² See Reinert, *supra* note 6, at 1717–18, 1722.

⁵³ See Duke & Malcom, *supra* note 45, at 302; Reinert, *supra* note 6, at 1724.

⁵⁴ See Mark B. Lapping et al., *Right-to-Farm Laws: Do They Resolve Land Use Conflicts?* 38 J. SOIL & WATER CONSERVATION, 465, 467 (1983) (indicating that right-to-farm laws are often worded too vaguely, but at least attempt to solve conflicts regarding land uses); Reinert, *supra* note 6, at 1728.

⁵⁵ See, e.g., Hamilton, *supra* note 7, at 118.

⁵⁶ Reinert, *supra* note 6, at 1728.

⁵⁷ See *id.* at 1720; see also Tory H. Lewis, Note, *Managing Manure: Using Good Neighbor Agreements to Regulate Pollution from Agricultural Production*, 61 VAND. L. REV. 1555, 1584 (2008) (describing "Good Neighbor Agreements" as a solution to farming nuisances).

To the extent that right-to-farm statutes are effective, scholars question whom they benefit.⁵⁸ The traditional concern is that right-to-farm statutes give too much assistance to large commercial farms without reciprocal benefits to the environment.⁵⁹ The agricultural community has shown mixed interest in environmental preservation.⁶⁰ If both farmers and their neighbors use their land in socially and economically beneficial ways, one might question why legislatures should favor farmers.⁶¹ In turn, one could propose a Coasean solution—which emphasizes market efficiency in the law—of encouraging farmers and residents to sign contracts where farmers agree to basic environmental protection standards in exchange for more protections from litigation.⁶² The value of right-to-farm statutes remains an open question, but state legislatures continue to promote them as a matter of policy.⁶³

Additionally, both the Farm Bill and hobby farms influence the development and use of agricultural land.⁶⁴ The Farm Bill is a comprehensive set of laws designed to provide food security, promote farming, and develop ethanol production.⁶⁵ However, one scholar notes that the Farm Bill has caused massive industrialization of American agriculture.⁶⁶ On a smaller scale, hobby farms—farms that are run for their owner's enjoyment rather than as a source of income—raise some environmental concerns.⁶⁷ Specifically, hobby farms sometimes represent a

⁵⁸ See Centner, *supra* note 2, at 141–42; Hand, *supra* note 1, at 347; Peter J. Wall, *Land Use and Agricultural Exceptionalism*, 16 SAN JOAQUIN AGRIC. L. REV. 219, 236–27 (2006–07); see also R. Lisle Baker, *My Tree Versus Your Solar Collector or Your Well Versus My Septic System?—Exploring Responses to Beneficial but Conflicting Neighboring Uses of Land*, 37 B.C. ENVTL. AFF. L. REV. 1, 8 (2010) (discussing right-to-farm statutes in the context of reciprocal harms).

⁵⁹ Reinert, *supra* note 6, at 1715, 1722.

⁶⁰ See Patricia E. Salkin & Brenda Stadel, *Agricultural Land Preservation*, in ZONING AND LAND USE CONTROLS § 56.01 (LexisNexis Matthew Bender 2011), available at LexisNexis ZLANDU.

⁶¹ See Baker, *supra* note 58, at 8; Wall, *supra* note 58, at 236–37.

⁶² See Lewis, *supra* note 57, at 1570, 1584; Reinert, *supra* note 6, at 1734–35.

⁶³ See Reinert, *supra* note 6, at 1738.

⁶⁴ See Eubanks, *supra* note 1, at 214–15, 225; Jess M. Krannich, *A Modern Disaster: Agricultural Land, Urban Growth, and the Need for a Federally Organized Comprehensive Land Use Planning Model*, 16 CORNELL J.L. & PUB. POL'Y 57, 83–84 (2006); Jesse J. Richardson, *Downzoning, Fairness and Farmland Protection*, 19 J. LAND USE & ENVTL. L. 59, 65–66 (2003).

⁶⁵ See Food, Conservation, and Energy Act of 2008, Pub. L. No. 110–246, 122 Stat. 1651 (codified as amended in scattered sections of 7, 15, 16, 21, 25, 26, 40, and 42 U.S.C.); Neil D. Hamilton, *Feeding the World's Future: Agrarian Justice and the Rule of Law*, 13 DRAKE J. AGRIC. L. 545, 556–57 (2008). See generally, Eubanks, *supra* note 1 (providing a history of the Farm Bill).

⁶⁶ See Eubanks, *supra* note 1, at 251–52.

⁶⁷ See Krannich, *supra* note 64, at 83–84; Richardson, *supra* note 64, at 65–66.

step toward developing farmland for residential purposes.⁶⁸ Thus, farmers are pressured to either become larger and more industrialized or sell their land for division.⁶⁹

Much of the ambiguity regarding the effectiveness of right-to-farm statutes results from confusion about whom they are designed to assist.⁷⁰ State legislatures often preface their right-to-farm statutes with a vague statement of intent.⁷¹ In these cases, it is unclear whether the legislature was most interested in protecting a rural farming culture, the environment, or the viability of an agricultural economy.⁷² Moreover, statutes designed to protect small farms may be more useful to large farms because the scale of nuisances often increases with farm size.⁷³ Much of the language of right-to-farm statutes, however, is more related to the cultural and environmental benefits associated with small farms than the economic influences of agribusinesses.⁷⁴

II. STATUTES, CASES, AND HISTORY OF AGRICULTURAL PRESERVATION LAWS BY STATE

States employ a variety of tactics to preserve agriculture.⁷⁵ New York, Nebraska, and Minnesota use three different techniques to assist farms while also trying to limit the influence of agribusinesses.⁷⁶ These methods are only a sample of available strategies.⁷⁷ Their statutory language, which ranges from broad statements about the historical impor-

⁶⁸ See Krannich, *supra* note 64, at 83–84.

⁶⁹ Reinert, *supra* note 6, at 1699; see Eubanks, *supra* note 1, at 251–52; Richardson, *supra* note 64, at 65–66.

⁷⁰ Hamilton, *supra* note 7, at 108 (stating that right-to-farm statutes are too broadly applicable).

⁷¹ Reinert, *supra* note 6; see, e.g., N.Y. AGRIC. & MKTS. LAW § 300 (McKinney 2011) (stating that the purpose of New York agricultural preservation is “to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products”).

⁷² Reinert, *supra* note 6, at 1718–19; see, e.g., N.Y. AGRIC. & MKTS. LAW § 300.

⁷³ Hamilton, *supra* note 7, at 112.

⁷⁴ See Centner, *supra* note 2, at 141. Scholars refer to farms of less than 1000 acres, with gross sales of less than \$250,000, as small family farms. Chester, *supra* note 8, at 80; Reinert, *supra* note 6, at 1698. While the per capita sales of small farms do not match those of large farms and CAFOs, they fit more neatly within traditional conceptions of preservation. Centner, *supra* note 2, at 141–42; see Salkin, *supra* note 60, § 56.01.

⁷⁵ Centner, *supra* note 2, at 147; Reinert, *supra* note 6, at 1695.

⁷⁶ NEB. CONST. art. XII, § 8 (1982); MINN. STAT. § 561.19 (2010); N.Y. AGRIC. & MKTS. LAW § 300 (McKinney 2011).

⁷⁷ See Centner, *supra* note 2, at 147 (listing the right-to-farm statutes of all fifty states). Some consider North Carolina to have the model right-to-farm statute. Lapping et al., *supra* note 54, at 465; Reinert, *supra* note 6, at 1707.

tance of agriculture, to a ban on corporate farming, to limits on nuisance protections for concentrated animal feeding operations (CAFOs), provides solid grounds for a comparative analysis.⁷⁸

A. *New York: A Standard Right-to-Farm Statute with an
Agricultural Advisory Council*

New York's agricultural preservation statute offers a basic set of protections similar to many states.⁷⁹ The statute begins with a statement of purpose.⁸⁰ The purpose statement indicates that New York's lands are in jeopardy, and therefore all efforts should be made to "protect and encourage the development and improvement of its agricultural land for production of food" and "protect agricultural lands as valued natural and ecological resources."⁸¹ Farming land is also valuable as an economic resource, as it accounts for billions of dollars in New York's economy.⁸²

The statute offers both nuisance and zoning protections to farmers, declaring that "an agricultural practice shall not constitute a private nuisance,"⁸³ and "local governments . . . shall not unreasonably restrict or regulate farm operations."⁸⁴ The statute allows for an exception to this protection when the local government can show that the "public health or safety is threatened" by the agricultural practice.⁸⁵

New York's nuisance protection for farmers has an interesting twist because the statute requires the State Advisory Council on Agriculture (Council) to determine whether an activity is a "sound agricultural practice" before farmers receive protection.⁸⁶ The Governor of New York appoints members of local farming communities to the Council, which advises the State Department of Agriculture on all farming and agricultural preservation issues.⁸⁷ Many states require that farmers follow some

⁷⁸ See NEB. CONST. art. XII, § 8 (1982); MINN. STAT. § 561.19; N.Y. AGRIC. & MKTS. LAW § 300.

⁷⁹ See Centner, *supra* note 2, at 113.

⁸⁰ N.Y. AGRIC. & MKTS. LAW § 300.

⁸¹ *Id.*

⁸² Nolon & Solloway, *supra* note 42, at 592.

⁸³ N.Y. AGRIC. & MKTS. LAW § 308.

⁸⁴ *Id.* § 305-a.

⁸⁵ *Id.*

⁸⁶ *Id.* §§ 308, 309; Centner, *supra* note 2, at 113.

⁸⁷ N.Y. AGRIC. & MKTS. LAW § 309; *Advisory Council on Agriculture*, N.Y. STATE DEP'T OF AGRIC. & MKTS., <http://www.agmkt.state.ny.us/AP/agservices/advisory.html> (search for "Advisory Council on Agriculture" then follow "New York State Department of Agriculture and Markets" hyperlink) (last visited Jan. 12, 2012).

baseline of accepted practices, but New York's statute attempts to define how such practices will be evaluated.⁸⁸ The Council's authority, especially when considered in light of the statute's purpose statement, allows for selective protection of farming practices that are most beneficial to the economy, culture, and environment.⁸⁹ Thus, the Council could favor the practices of small farms instead of agribusiness and CAFOs.⁹⁰

Case law precedent concerning New York's right-to-farm statute instructs New York courts to uphold protections for farmers in the absence of compelling evidence to do otherwise.⁹¹ For example, in *Town of Lysander v. Hafner*, the court evaluated whether a town could pass zoning ordinances that limited a farmer's ability to construct mobile homes for housing migratory workers.⁹² The court interpreted the meaning of "farm operations" broadly to include residential buildings and held that the town did not present sufficient evidence to show a risk to public safety—the requirement for an exception to New York's right-to-farm law.⁹³

Additionally, case law precedent reinforces the Council's determinations concerning agricultural practices.⁹⁴ For example, a court upheld the Council's determination that storage of pig manure in a large concrete container is a sound agricultural practice.⁹⁵ The court also decided that the Council has the authority to determine practices for pesticide use.⁹⁶ Although these rulings reinforce the authority of the Council to protect farmers, they do not embody the environmental protections envisioned in the purpose statement of New York's agricultural preservation statutes.⁹⁷ New York's laws thus offer an interesting point of comparison because of their effectiveness in preserving agriculture and promoting family farms.⁹⁸

⁸⁸ N.Y. AGRIC. & MKTS. LAW § 308; see Dowell, *supra* note 8, at 133–35.

⁸⁹ See N.Y. AGRIC. & MKTS. LAW § 308; Dowell, *supra* note 8, at 134–35.

⁹⁰ See N.Y. AGRIC. & MKTS. LAW § 308; Dowell, *supra* note 8, at 135.

⁹¹ See *Town of Lysander v. Hafner*, 759 N.E.2d 356, 359 (N.Y. 2001); *Village of Lacona v. N.Y. State Dep't of Agric. & Mkts.*, 858 N.Y.S.2d 833, 835 (App. Div. 2008); *Pure Air & Water, Inc. v. Davidsen*, 668 N.Y.S.2d 248, 250–51 (App. Div. 1998).

⁹² 759 N.E.2d at 359.

⁹³ *Id.*

⁹⁴ *Pure Air & Water*, 669 N.Y.S.2d at 250–51.

⁹⁵ *Lacona*, 858 N.Y.S.2d at 835–36.

⁹⁶ *Id.* at 835.

⁹⁷ See N.Y. AGRIC. & MKTS. LAW §§ 300, 305-a, 308, 309 (McKinney 2011); *Lysander*, 759 N.E.2d at 358–59; *Lacona*, 858 N.Y.S.2d at 835–36; *Pure Air & Water*, 668 N.Y.S.2d at 250–51.

⁹⁸ See N.Y. AGRIC. & MKTS. LAW § 300.

B. *Nebraska: Nuisance Protection and a Constitutional Ban on Corporate Farming*

Nebraska's laws combined a standard nuisance protection clause and a constitutional amendment that restricted the ability of out-of-state corporations to operate farms in the state.⁹⁹ The Nebraska legislature, in passing the Constitutional amendment, addressed concerns about the influences of agribusinesses and provided additional protection to family farms because only they offered sufficient cultural and environmental benefits.¹⁰⁰ The combination of nuisance protection and limitations on corporate farming between 1982 and 2006 distinguish Nebraska's agricultural preservation laws from those of many other states.¹⁰¹

I. The Structure and Limitations of Nebraska's Right-to-Farm Statute

Nebraska's right-to-farm statute provides a basic set of nuisance protections for both animal and crop farms.¹⁰² The statute provides that "[a] farm . . . shall not be found to be a public or private nuisance," as long as the farming activity is a preexisting use.¹⁰³ Another section of the statute defines "farm" as "any tract of land over ten acres in area used for or devoted to the commercial production of farm products."¹⁰⁴ The statute thus excludes very small farms from the nuisance shield.¹⁰⁵ The legislature makes no further distinction between types of farms in the basic right-to-farm statute.¹⁰⁶ The statute's "coming to the nuisance" defense, however, requires the farming practices to predate the plaintiff's enjoyment of the land.¹⁰⁷ Nebraska also allows

⁹⁹ NEB. CONST. art. XII, § 8 (1982); NEB. REV. STAT. § 2-4403 (2010). The amendment was later struck down in 2006. *Jones v. Gale*, 470 F.3d 1261, 1271 (8th Cir. 2006).

¹⁰⁰ See Anthony B. Schutz, *Corporate-Farming Measures in a Post-Jones World*, 14 DRAKE J. AGRIC. L. 97, 120–21 (2009); Chester, *supra* note 8, at 82.

¹⁰¹ See NEB. CONST. art. XII, § 8; NEB. REV. STAT. § 2-4403; *Jones*, 470 F.3d at 1271; Schutz, *supra* note 100, at 106. Twelve other states have some form of corporate farming restriction. Schutz, *supra* note 100, at 106.

¹⁰² NEB. REV. STAT. §§ 2-4402 to -4403; see Reinert, *supra* note 6, at 1707 (describing the North Carolina right-to-farm law as a model statute, and detailing its nuisance protections).

¹⁰³ NEB. REV. STAT. § 2-4403.

¹⁰⁴ *Id.* § 2-4402. The statute also offers similar protections to "public grain warehouse[s]." See *id.* § 2-4403.

¹⁰⁵ *Id.* § 2-4402.

¹⁰⁶ *Id.* § 2-4403.

¹⁰⁷ *Id.*

the use of zoning to protect farms, but that scheme is not part of the right-to-farm statute.¹⁰⁸

The Nebraska Supreme Court interprets the right-to-farm statute narrowly, thereby offering farmers protection only when their operations fit within the text of the statute.¹⁰⁹ Most recently, the court held that the statute does not apply retroactively.¹¹⁰ In earlier cases, the court was not sympathetic to CAFOs for hogs, finding that construction of hog confinement areas did not protect the farmers because they changed their use of their land and thus could not avail themselves of the “coming to the nuisance” defense.¹¹¹ These cases show that the court did not strike down nuisance protections for CAFOs because the farms should not have been protected within the plain meaning of the statute.¹¹²

2. A Constitutional Amendment Banning Corporate Farming

An amendment to Nebraska’s Constitution changed the background of agricultural preservation by prohibiting out-of-state corporate farming.¹¹³ While in effect, article twelve, section eight provided that “[n]o corporation or syndicate shall acquire . . . any title to real estate used for farming or ranching in this state, or engage in farming or ranching.”¹¹⁴ Additionally, the amendment did not apply to “family farm[s]” where the “majority of the voting stock is held by members of a family . . . at least one of whom is a person residing on or actively engaged in the day to day labor and management of the farm.”¹¹⁵ In this way, the people of Nebraska tried to affirmatively ban agribusinesses to preserve their culture and heritage.¹¹⁶

In *Jones v. Gale*, the Eighth Circuit held article twelve, section eight of the Nebraska Constitution invalid because it violated the dormant

¹⁰⁸ See, e.g., *id.* § 23-114.03 (allowing counties to set restrictions on the use of agricultural lands); *id.* § 81-2,147.12 (preempting local laws relating to the sale of seeds).

¹⁰⁹ *Soukop v. ConAgra, Inc.*, 653 N.W.2d 655, 658 (Neb. 2002); *Flansburgh v. Coffey*, 370 N.W.2d 127, 129, 131 (Neb. 1985); *Cline v. Franklin Pork, Inc.*, 361 N.W.2d 566, 572 (Neb. 1985).

¹¹⁰ *Soukop*, 653 N.W.2d at 658 (holding that the 1998 addition of grain operators in the definition of farm did not extend retroactive protections for grain operators).

¹¹¹ See *Flansburgh*, 370 N.W.2d at 129, 131; *Cline*, 361 N.W.2d at 569, 572.

¹¹² See NEB. REV. STAT. § 2-4403; *Flansburgh*, 370 N.W.2d at 129, 131; *Cline*, 361 N.W.2d at 569, 572.

¹¹³ NEB. CONST. art. XII, § 8 (1982); see *Chester*, *supra* note 8, at 82, 84; *Schutz*, *supra* note 100, at 106–07.

¹¹⁴ NEB. CONST. art. XII, § 8 (1982).

¹¹⁵ *Id.*

¹¹⁶ See *id.*; *Schutz*, *supra* note 100, at 101–02.

commerce clause.¹¹⁷ The dormant commerce clause provides that, because Congress has the affirmative power to regulate commerce, states may not act to limit interstate commerce.¹¹⁸ The court specifically attacked the exception that allowed corporate farming for family farms that were managed by Nebraska residents.¹¹⁹ The statute violated the dormant commerce clause because it discriminated against out-of-state businesses.¹²⁰ Because only part of the statute violated the dormant commerce clause, it may still be permissible for a state to ban corporate farming all together.¹²¹ Nevertheless, Nebraska case law required the Eighth Circuit to hold the entire statute unconstitutional instead of simply severing the offending provision.¹²²

When one considers the amendment along with the right-to-farm statute, Nebraska had developed a distinct strategy for agricultural preservation.¹²³

C. *Minnesota: Limits on Nuisance Protection for CAFOs and a Ban on Corporate Farming*

The Minnesota agricultural preservation statutes both provide small farms with nuisance protection and ban corporate farming.¹²⁴ The state's right-to-farm statute operates like those of New York and Nebraska.¹²⁵ The statute provides that a farm "is not and shall not become a private or public nuisance after two years from its established date of operation."¹²⁶ It also contains a few standard limitations—the farm must be in an "agriculturally zoned area," the farmer must follow "generally accepted agricultural practices," and the farmer cannot operate equipment negligently.¹²⁷ The statute defines farm as "a facility and its appurtenances for the production of crops, livestock, poultry, dairy products or poultry products, but not a facility primarily engaged

¹¹⁷ 470 F.3d 1261, 1271 (8th Cir. 2006).

¹¹⁸ *See id.* at 1267.

¹¹⁹ *Id.* at 1264, 1267.

¹²⁰ *Id.* at 1269.

¹²¹ *Id.* at 1271.

¹²² *Id.*

¹²³ *See* NEB. CONST. art. XII, § 8 (1982); NEB. REV. STAT. §§ 2-4402, -4403 (2010).

¹²⁴ MINN. STAT. §§ 500.24, 561.19 (2010); *see* Schutz, *supra* note 100, at 132–33; Chester, *supra* note 8, at 81–82.

¹²⁵ *See* MINN. STAT. § 561.19; NEB. REV. STAT. § 2-4403; N.Y. AGRIC. & MKTS. LAW §§ 305-a, 308 (McKinney 2011).

¹²⁶ MINN. STAT. § 561.19.

¹²⁷ *Id.*

in processing agricultural products.”¹²⁸ Interestingly, the statute does not apply to farms that can hold more than 1000 hogs or 2500 cattle.¹²⁹ Although Minnesota’s right-to-farm statute provides standard protections for farmers, the legislature must have been concerned about large CAFOs abusing environmental protection laws.¹³⁰

Minnesota has another statute that bans certain types of corporate farming.¹³¹ In the statute’s purpose statement, “the family farm” is described as “the most socially desirable mode of agricultural production” and essential to “the stability and well-being of rural society in Minnesota and the nuclear family.”¹³² The statute goes on to list certain exceptions to the ban, mostly related to family corporations.¹³³ The exceptions have some of the residency requirements seen in the Nebraska constitution but are more complex.¹³⁴ Consequently, the reasoning in *Jones v. Gale* probably does not undermine Minnesota’s ban on corporate farming.¹³⁵

Similar to Nebraska, the Minnesota courts interpret these statutes according to their plain meaning.¹³⁶ Farmers may be liable for nuisances, even when using generally accepted agricultural equipment.¹³⁷ Plaintiffs must show that the farmer used that equipment negligently.¹³⁸ For example, a dairy farm that used a clay manure storage area could commit a nuisance from the odor of that manure if the farmers did not properly construct the storage basin.¹³⁹

¹²⁸ *Id.* The statute uses “agricultural operation” instead of farm. *Id.*

¹²⁹ *Id.*

¹³⁰ *See id.*

¹³¹ *Id.* § 500.24.

¹³² MINN. STAT. § 500.24.

¹³³ *Id.*

¹³⁴ *See* NEB. CONST. art. XII, § 8 (1982); MINN. STAT. § 500.24.

¹³⁵ *See* MINN. STAT. § 500.24; *Jones*, 470 F.3d at 1271; *see also infra* notes 159–232 and accompanying text (analyzing the statutes in context).

¹³⁶ *See, e.g.,* *Lilyerd v. Carlson*, 499 N.W.2d 803, 811 (Minn. 1993); *Kuhl v. Halquist Farms, Inc.*, No. A05–2097, 2006 Minn. App. Unpub. LEXIS 1123, at *15–*17 (Minn. Ct. App. Oct. 3, 2006); *Wendinger v. Frost Farms, Inc.*, 662 N.W.2d 546, 551, 554–55 (Minn. Ct. App. 2003).

¹³⁷ *Kuhl*, 2006 Minn. App. Unpub. LEXIS 1123, at *15; *Wendinger*, 662 N.W.2d at 554–55.

¹³⁸ *Kuhl*, 2006 Minn. App. Unpub. LEXIS 1123, at *15–17; *Wendinger*, 662 N.W.2d at 554–55.

¹³⁹ *See Kuhl*, 2006 Minn. App. Unpub. LEXIS 1123, at *2, *16–17.

III. EMPIRICAL DATA ON DEMOGRAPHIC CHANGES IN FARMING BY STATE, FARM SIZE, AND GROSS SALES

A. An Overview of Methods and Considerations

The U.S. Department of Agriculture keeps detailed records of changes in farming output and demographics, measured every five years.¹⁴⁰ The Department of Agriculture and the Census Bureau have collected data on agricultural demographics since 1840.¹⁴¹ For the purposes of this Note, data from 1987, 1992, 1997, 2002, and 2007 will be analyzed.¹⁴² Demographic changes are important because they may signify the increase of agribusinesses at the expense of more traditional agriculture.¹⁴³ The current literature, published before some of the more recent agricultural censuses, offers only a brief analysis of demographic changes and does not attempt to link those changes with specific statutes.¹⁴⁴

Although New York, Nebraska, and Minnesota have different agricultural protection statutes, they all exhibit similar trends—large and small sized farms are increasing in number while medium size farms are decreasing in number.¹⁴⁵ The following section highlights the data indicating these demographic shifts.

New York and Minnesota experienced the most similar changes in demographics.¹⁴⁶ Nebraska's numbers are somewhat deceptive, however, because the average farm is much larger in Nebraska than New York and Minnesota.¹⁴⁷ In 2007, the average size of a farm was 953 acres

¹⁴⁰ U.S. DEP'T OF AGRIC., AC-07-A-51, 2007 CENSUS OF AGRICULTURE (2009) [hereinafter 2007 CENSUS].

¹⁴¹ *Id.*

¹⁴² See *id.*; see also *Historical Census Publications*, DEP'T OF AGRIC., http://www.agcensus.usda.gov/Publications/Historical_Publications/index.asp (last visited Jan. 16, 2012) (indicating a gap of available data between 1950 and 1987).

¹⁴³ Chester, *supra* note 8, at 80; Reinert, *supra* note 6, at 1698.

¹⁴⁴ See generally Reinert, *supra* note 6 (analyzing the effects of right-to-farm statutes on family farms without a detailed analysis of demographic shifts).

¹⁴⁵ See 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 2002 MINN. DATA, *supra* note 16, at 16; 2002 NEB. DATA, *supra* note 16, at 16; 2002 N.Y. DATA, *supra* note 16, at 16; 1997 MINN. DATA, *supra* note 16, at 20; 1997 NEB. DATA, *supra* note 16, at 20; 1997 N.Y. DATA, *supra* note 16, at 12, 20; 1992 MINN. DATA, *supra* note 16, at 20; 1992 NEB. DATA, *supra* note 16, at 20; 1992 N.Y. DATA, *supra* note 16, at 20.

¹⁴⁶ 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁴⁷ 2007 CENSUS, *supra* note 140, at 348–50.

in Nebraska, 197 acres in New York, and 332 acres in Minnesota.¹⁴⁸ At the same time, Nebraska had 36,352 farms, compared to 36,352 in New York and 80,992 farms in Minnesota.¹⁴⁹ The states all experienced similar trends in demographic shifts in size despite different statutory approaches to agricultural preservation.¹⁵⁰

B. Demographic Changes in Number of Farms

New York, Nebraska, and Minnesota experienced similar shifts in the number of small, medium, and large farms between 1987 and 2007.¹⁵¹ The number of small farms increased in New York and Minnesota by 28.6% and 39.8% respectively; the number of small farms in Nebraska decreased by 1.7%.¹⁵² The number of medium-sized farms decreased in all three states, by 25.8% in New York, by 26.7% in Minnesota, and by 36.2% in Nebraska.¹⁵³ The number of large farms increased in all three states—by 35.8% in New York, by 45.2% in Minnesota, and by 6.9% in Nebraska.¹⁵⁴

The demographic shifts in gross sales in New York, Nebraska, and Minnesota mirror the shifts in average farm size.¹⁵⁵ The number of farms with low gross sales increased in New York by 14.5% and in Minnesota by 54.9%.¹⁵⁶ Conversely, the number of farms with low gross sales in Nebraska decreased by 2.1%.¹⁵⁷ Farms with moderate gross

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁵¹ 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18. The statistics provided in this section are summaries of data provided in the appendix.

¹⁵² 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁵³ 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁵⁴ 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁵⁵ 2007 MINN. DATA, *supra* note 16, at 10; 2007 NEB. DATA, *supra* note 16, at 10; 2007 N.Y. DATA, *supra* note 16, at 10; 1992 MINN. DATA, *supra* note 16, at 10; 1992 NEB. DATA, *supra* note 16, at 10; 1992 N.Y. DATA, *supra* note 16, at 10.

¹⁵⁶ 2007 MINN. DATA, *supra* note 16, at 10; 2007 N.Y. DATA, *supra* note 16, at 10; 1992 MINN. DATA, *supra* note 16, at 10; 1992 N.Y. DATA, *supra* note 16, at 10.

¹⁵⁷ 2007 NEB. DATA, *supra* note 16, at 10; 1992 NEB. DATA, *supra* note 16, at 10.

sales decreased in all three states—by 30.5% in New York, by 42.8% Minnesota, and by 48.1% in Nebraska.¹⁵⁸ Differing from the data by size, the number of farms with high gross sales increased in all three states—by 107.9% in New York, by 266.4% in Minnesota, and by 216.9% in Nebraska.¹⁵⁹

IV. THE DEMOGRAPHIC TRENDS INDICATE THAT THE STATUTES ARE INEFFECTIVE AND COULD BE IMPROVED BY MORE TAILORED ACTION

The Department of Agriculture's data indicates that, despite having different strategies for protecting small and large farms, New York, Nebraska, and Minnesota have similar demographic trends in the number of farms by size and gross sales.¹⁶⁰ The lack of a correlation between divergent statutory language and statistical results suggests that these agricultural preservation statutes are not effective.¹⁶¹ Macroeconomic factors, such as the Farm Bill, probably have a greater effect on the success of agricultural preservation.¹⁶² Nevertheless, right-to-farm statutes can still play a role in environmental preservation.¹⁶³ States can solve many of the problems associated with right-to-farm statutes by permitting state agricultural boards to consider not only sound practices but also the type of farm.¹⁶⁴

A. Demographic Data Indicates That Right-to-Farm Statutes are Ineffective

The demographic trends discussed in Part III suggest that the differences in statutory language have little influence on farming growth. Notably, small and large farms have increased in all three states, while

¹⁵⁸ 2007 MINN. DATA, *supra* note 16, at 10; 2007 NEB. DATA, *supra* note 16, at 10; 2007 N.Y. DATA, *supra* note 16, at 10; 1992 MINN. DATA, *supra* note 16, at 10; 1992 NEB. DATA, *supra* note 16, at 10; 1992 N.Y. DATA, *supra* note 16, at 10.

¹⁵⁹ 2007 MINN. DATA, *supra* note 16, at 10; 2007 NEB. DATA, *supra* note 16, at 10; 2007 N.Y. DATA, *supra* note 16, at 10; 1992 MINN. DATA, *supra* note 16, at 10; 1992 NEB. DATA, *supra* note 16, at 10; 1992 N.Y. DATA, *supra* note 16, at 10.

¹⁶⁰ 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁶¹ See NEB. CONST. art. XII, § 8 (1982); MINN. STAT. § 561.19 (2010); N.Y. AGRIC. & MKTS LAW. § 300 (McKinney 2011); 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁶² See Centner, *supra* note 2, at 90. See generally Eubanks, *supra* note 1.

¹⁶³ See Reinert, *supra* note 6, at 1738 (suggesting how right-to-farm statutes could be amended to preserve the environment).

¹⁶⁴ See Centner, *supra* note 2, at 143; Reinert, *supra* note 6, at 1736.

the number of medium-sized farms has decreased.¹⁶⁵ The cause of these trends and the overall effectiveness of the statutes, however, cannot be determined from the Department of Agriculture's data alone.¹⁶⁶ The data offers no baseline for comparison because all states have right-to-farm statutes and all states differ in the structure of their agricultural economy.¹⁶⁷

Surprisingly, the data does not coincide with the expectation that divergent strategies for farm preservation would produce different results. Nebraska and Minnesota have made strong attempts to limit corporate farming but have only experienced comparable increases in the number of farms with high gross sales to New York.¹⁶⁸ To the extent that the data differs from state to state, Nebraska's data is the most distinctive.¹⁶⁹ Yet Nebraska and Minnesota have the most similar statutes, suggesting that New York should have more distinctive results.¹⁷⁰

Nebraska's deviation can partially be explained by the structure of its right-to-farm statute. Nebraska refused to extend nuisance protections to farms with less than ten acres.¹⁷¹ Accordingly, the most dramatic drop in the number of small farms occurred in farms with less than ten acres.¹⁷² The absence of this protection and the corresponding drop in the number of small farms indicates the importance of nuisance shields in maintaining farms.¹⁷³ Thus, although analysis of the demographic trends as a whole downplays the significance of right-to-farm statutes, their presence is somewhat important. Other data does not show what occurs with the complete removal of nuisance protections.¹⁷⁴ Neither Minnesota's removal of nuisance protection for CA-

¹⁶⁵ 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁶⁶ See Centner, *supra* note 2, at 90 (suggesting economic factors influence farming population shifts).

¹⁶⁷ See *id.* at 87, 88.

¹⁶⁸ See 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁶⁹ Compare 2007 MINN. DATA, *supra* note 16, at 17, and 2007 N.Y. DATA, *supra* note 16, at 17, and 1992 MINN. DATA, *supra* note 16, at 18, and 1992 N.Y. DATA, *supra* note 16, at 18, with 2007 NEB. DATA, *supra* note 16, at 17, and 1992 NEB. DATA, *supra* note 16, at 18.

¹⁷⁰ See *supra* notes 75–139 and accompanying text.

¹⁷¹ NEB. REV. STAT. § 2-4403 (2010).

¹⁷² 2007 NEB. DATA, *supra* note 16, at 10, 17; 1992 NEB. DATA, *supra* note 16, at 10, 18.

¹⁷³ See NEB. REV. STAT. § 2-4403; 2007 NEB. DATA, *supra* note 16, at 10, 17; 1992 NEB. DATA, *supra* note 16, at 10, 18.

¹⁷⁴ See MINN. STAT. § 561.19 (2010); NEB. REV. STAT. §§ 2-4402 to -4403; N.Y. AGRIC. & MKTS. LAW §§ 300, 308 (McKinney, 2011); 2007 MINN. DATA, *supra* note 16, at 17; 2007

FOs nor Nebraska and Minnesota's general limitations on corporate farming correspond with shifts in farm's land area or gross sales.¹⁷⁵ The other small differences in Nebraska's data trends are best explained by the differences in average farm size between Nebraska and the other two states.¹⁷⁶

While previous scholarship has focused on the distinction between small and large farms, the data indicates that distinguishing among three size groups reveals meaningfully different trends.¹⁷⁷ Scholars traditionally separate farms into two categories—farms with less than both 1000 acres and \$250,000 in gross sales, and larger farms.¹⁷⁸ It makes sense, however, to break farms into three categories—farms that do not produce enough revenue to support their owners (hobby farms), family farms, and agribusinesses.¹⁷⁹ For the purpose of this Note, hobby farms are those with less than both \$10,000 in gross sales and 100 acres.¹⁸⁰

The drastic increases in the number of large farms and hobby farms, and corresponding decreases in medium-sized farms, indicate that economic pressures overwhelm the statutes' strategies.¹⁸¹ Though right-to-farm statutes may be important for the protection of farms generally, attempts to limit corporate farming appear to be ineffective.¹⁸² Despite having an outright ban on corporate farming, Nebraska and

NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁷⁵ See NEB. CONST. art. XII, § 8 (1982); MINN. STAT. §§ 500.24, 561.19; 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18.

¹⁷⁶ See *supra* notes 140–150 and accompanying text.

¹⁷⁷ See, e.g., Centner, *supra* note 2, at 141–42; Reinert, *supra* note 6, at 1698.

¹⁷⁸ See Chester, *supra* note 8, at 80; Reinert, *supra* note 6, at 1698. These numbers are not adjusted for inflation. *But see* Eubanks, *supra* note 1, at 229 (analyzing the national decrease in numbers of small, medium, and large farms). Gross sales provide a better indication of the economic structure of a farm, but because of inflation, land acreage offers a more consistent variable for comparison across time. See Reinert, *supra* note 6, at 1698.

¹⁷⁹ See Eubanks, *supra* note 1, at 229. Hobby farms lack a clear definition. See, e.g., Krannich, *supra* note 64, at 83 (stating that three to five acre farms are hobby farms); Richardson, *supra* note 64, at 65–66 (indicating that hobby farms are about ten acres in size).

¹⁸⁰ When originally analyzing the data, I expected only to find a distinction between small and large farms. I made these categories only after viewing the data and recognizing the difference between smaller family farms, which I describe as hobby farms, and larger family farms.

¹⁸¹ See Centner, *supra* note 2, at 90.

¹⁸² See MINN. STAT. § 561.19 (2010); NEB. REV. STAT. § 2-4403 (2010); N.Y. AGRIC. & MKTS. LAW § 308 (McKinney 2011); 2007 MINN. DATA, *supra* note 16, at 10; 2007 NEB. DATA, *supra* note 16, at 10; 1992 MINN. DATA, *supra* note 16, at 10; 1992 NEB. DATA, *supra* note 16, at 10.

Minnesota experienced drastic increases in the number of farms with more than \$250,000 in gross sales (217% and 266%, respectively).¹⁸³ New York, which does not have such a ban, experienced a 108% increase.¹⁸⁴ Conversely, all three states saw a decrease in the number of moderate income farms.¹⁸⁵ The decreases by gross sales ranged from 30% to 48%.¹⁸⁶ When grouped by size, the decreases ranged from 25% to 38%.¹⁸⁷

Demographic shifts away from medium-sized farms threaten many of the cultural and economic benefits that agricultural preservation statutes seek to protect.¹⁸⁸ Both New York and Minnesota explicitly justify their agricultural preservation statutes on the importance of protecting cultural values, traditional economies, and the environment.¹⁸⁹ Additionally, scholars attribute environmental benefits to medium-sized farms.¹⁹⁰ Thus, it appears that agribusinesses and hobby farms unjustly benefit from right-to-farm statutes.¹⁹¹

B. *A Potential Solution: Granting Agricultural Advisory Councils Discretion to Favor Both Environmentally Sound Practices and Medium-Sized Farms*

The disconnect between the purpose underlying right-to-farm statutes and changing demographics suggests the need to revise the laws.¹⁹² Proposed solutions are difficult to verify because the variation between states' statutes and economies makes clear comparison almost impossible.¹⁹³ Additionally, macroeconomic issues appear to drive the shifts in farming demographics.¹⁹⁴ Agricultural preservation statutes can only

¹⁸³ 2007 MINN. DATA, *supra* note 16, at 10; 2007 NEB. DATA, *supra* note 16, at 10; 1992 MINN. DATA, *supra* note 16, at 10; 1992 NEB. DATA, *supra* note 16, at 10.

¹⁸⁴ 2007 N.Y. DATA, *supra* note 16, at 10; 1992 N.Y. DATA, *supra* note 16, at 10.

¹⁸⁵ 2007 MINN. DATA, *supra* note 16, at 10; 2007 NEB. DATA, *supra* note 16, at 10; 2007 N.Y. DATA, *supra* note 16, at 10; 1992 MINN. DATA, *supra* note 16, at 10; 1992 NEB. DATA, *supra* note 16, at 10; 1992 N.Y. DATA, *supra* note 16, at 10.

¹⁸⁶ *See* 2007 MINN. DATA, *supra* note 16, at 10; 2007 NEB. DATA, *supra* note 16, at 10; 2007 N.Y. DATA, *supra* note 16, at 10; 1992 MINN. DATA, *supra* note 16, at 10; 1992 NEB. DATA, *supra* note 16, at 10; 1992 N.Y. DATA, *supra* note 16, at 10.

¹⁸⁷ *See* 2007 MINN. DATA, *supra* note 16, at 17; 2007 NEB. DATA, *supra* note 16, at 17; 2007 N.Y. DATA, *supra* note 16, at 17; 1992 MINN. DATA, *supra* note 16, at 18; 1992 NEB. DATA, *supra* note 16, at 18; 1992 N.Y. DATA, *supra* note 16, at 18.

¹⁸⁸ *See* Reinert, *supra* note 6, at 1737.

¹⁸⁹ MINN. STAT. § 500.24 (2010); N.Y. AGRIC. & MKTS. LAW § 300 (McKinney 2011).

¹⁹⁰ *See, e.g.*, Krannich, *supra* note 64, at 83–84; Reinert, *supra* note 6, at 1737.

¹⁹¹ *See, e.g.*, Krannich, *supra* note 64, at 83–84; Reinert, *supra* note 6, at 1737.

¹⁹² *See* Reinert, *supra* note 6, at 1736.

¹⁹³ *See* Centner, *supra* note 2, at 90, 147 (commenting on the influence of macroeconomic factors).

¹⁹⁴ *See id.* at 90; Eubanks, *supra* note 1, at 217.

insulate certain populations from those pressures.¹⁹⁵ Potential solutions, such as creating more distinctions within the statutes, encouraging contractual agreements, and strengthening right-to-farm statutes offer some promise.¹⁹⁶ Legislatures should proceed carefully in implementing any changes to right-to-farm statutes to minimize economic disruption.¹⁹⁷ Using state agricultural boards to decide which farms and practices are most deserving of protection will promote locally appropriate changes consistent with the purpose statements of agricultural preservation statutes.¹⁹⁸

First, universally strengthening right-to-farm statutes will not reverse the demographic trends because of the economic pressures driving agricultural industrialization.¹⁹⁹ Some commentators champion the enhancement of right-to-farm statutes as a solution to the decreasing number of farms.²⁰⁰ The more extreme version of this argument contends that population migration and lack of cultural understanding are the primary threats to the American family farm.²⁰¹ The more moderate approach articulates that agricultural interests need more protection because states have not integrated current right-to-farm statutes with broader economic policies.²⁰² The moderate argument correctly characterizes many of the problems facing American agriculture as both economic and cultural.²⁰³ Economic changes, more than cultural intolerance, drive agricultural demographics.²⁰⁴

Other proposed changes to agricultural preservation, such as modifying the structure of farm subsidies or encouraging contract formation, provide a background when considering the alteration of right-to-farm statutes.²⁰⁵ First, the Farm Bill gives rise to many of the economic influences that alter the effectiveness of right-to-farm statutes.²⁰⁶ Sec-

¹⁹⁵ See Reinert, *supra* note 6, at 1738.

¹⁹⁶ Lewis, *supra* note 57, at 1594–95; Reinert, *supra* note 6, at 1738; see Dowell, *supra* note 8, at 152–53.

¹⁹⁷ See Centner, *supra* note 2, at 145.

¹⁹⁸ See Reinert, *supra* note 6, at 1737.

¹⁹⁹ See Dowell, *supra* note 8, at 152–53 (suggesting that states should strengthen right-to-farm statutes); Eubanks, *supra* note 1, at 217 (describing the industrialization of farming); Hamilton, *supra* note 7, at 118.

²⁰⁰ See Dowell, *supra* note 8, at 128, 152–53.

²⁰¹ See *id.* at 128.

²⁰² See Hamilton, *supra* note 7, at 118.

²⁰³ See Dowell, *supra* note 8, at 149 (indicating that lack of understanding and education are the primary culprits of agricultural destruction); Hamilton, *supra* note 7, at 118.

²⁰⁴ See Centner, *supra* note 2, at 90.

²⁰⁵ See Eubanks, *supra* note 1, at 309–10; Lewis, *supra* note 57, at 1594–95.

²⁰⁶ See Eubanks, *supra* note 1, at 309–10.

ond, fixing inconsistencies within right-to-farm statutes would permit farmers and residents to bargain more efficiently.²⁰⁷ Nevertheless, legislatures should change how right-to-farm statutes function by altering the rights they give to farmers and residents.²⁰⁸

Legislatures could start by enacting statutes that allow courts to differentiate between different types of plaintiffs and defendants.²⁰⁹ Offering nuisance protections only to smaller farms and allowing claims only from local residents would further the goals of agricultural preservation.²¹⁰ The idea that residents should have some right to sue, especially if a farmer drastically changes the type of farming practiced, comports with notions of fairness.²¹¹ Further, distinguishing plaintiffs and defendants could account for local economic or environmental factors because they can incorporate the nuances of local farming economies.²¹²

Allowing courts to differentiate based on plaintiffs and defendants does not fully address the declining number of medium-sized farms.²¹³ The argument advocates distinguishing between businesses and family farms because businesses can view nuisance as an expense rather than a threat to their livelihood.²¹⁴ While the argument's reasoning may be accurate, it does not properly account for the growing number of small farms.²¹⁵ The legislatures and courts should therefore attempt to favor medium-sized farms.²¹⁶ They should establish laws that account for local culture, climate, and individual circumstances.²¹⁷ However, courts may lack the specialized expertise to determine the subjective cultural and environmental benefits to a given farm or farming practice.²¹⁸

State agricultural boards, such as New York's Agricultural Advisory Council (Council), are the proper authorities to decide what types of farming to encourage.²¹⁹ Statutes that define strict acreage and gross income requirements for nuisance protection might not be able to ac-

²⁰⁷ See Lewis, *supra* note 57, at 1584; Reinert, *supra* note 6, at 1734.

²⁰⁸ See Reinert, *supra* note 6, at 1738.

²⁰⁹ See *id.*

²¹⁰ See *id.* at 1736–38.

²¹¹ Hand, *supra* note 1, at 311–12.

²¹² Reinert, *supra* note 6, at 1722.

²¹³ See *id.* at 1736–37. Farms with 50 to 499 acres of land have been decreasing most dramatically. See *id.* at 1698.

²¹⁴ *Id.* at 1722, 1733.

²¹⁵ See *id.*; *supra* notes 140–150 and accompanying text.

²¹⁶ See Reinert, *supra* note 6, at 1736.

²¹⁷ See *id.*

²¹⁸ See *id.* at 1737.

²¹⁹ See N.Y. AGRIC. & MKTS. LAW § 309 (McKinney 2011).

count for differences in climate and economic structure.²²⁰ The New York State legislature has already charged the Council with determining “sound agricultural practices.”²²¹ The Council should have the expertise to determine not only what practices are generally sound but also which most benefit the local economy and environment.²²² Through the delegation of authority and discretion to their agricultural boards, states may gradually modify the application of their agricultural preservation laws.²²³

The proposal of greater reliance on agricultural boards shifts the responsibility from courts to these boards.²²⁴ Greater reliance on agricultural boards does not necessarily give farmers more certainty as to how they should act.²²⁵ The real advantage of shifting more discretion to agricultural boards would not be the certainty offered to any individual claimant.²²⁶ Rather, the advantage would be that the boards could substantively change which types of farms to protect to increase fairness and environmental preservation.²²⁷

Furthermore, although modifying statutes risks disrupting existing economies and does not undermine the economic forces driving farming demographic shifts, gradual change can improve the efficacy of right-to-farm statutes’ preservation of the environment.²²⁸ Different strategies aimed at directing the benefits of right-to-farm statutes have not been effective, and one should question why modifying statutes to promote medium-sized farms would be any different.²²⁹ The two dangers contradict each other—one cannot fail by causing insufficient economic change and simultaneously cause too much economic change.²³⁰ Nevertheless, both dangers are real, and legislatures should proceed with caution.²³¹ By granting specialized agricultural boards primary oversight of developing local programs, states should be able to work gradually but effectively.²³² Moreover, states may draw on the

²²⁰ See Reinert, *supra* note 6, at 1722.

²²¹ N.Y. AGRIC. & MKTS. LAW §§ 308, 309.

²²² See *id.* § 309.

²²³ See *id.*; Centner, *supra* note 2, at 107.

²²⁴ See Hamilton, *supra* note 7, at 109.

²²⁵ See *id.*

²²⁶ See Reinert, *supra* note 6, at 1737–38.

²²⁷ See *id.*

²²⁸ See *id.* at 1738; see also Eubanks, *supra* note 1, at 309 (suggesting that the Farm Bill created the economic incentives that cause farms to damage the environment).

²²⁹ See *supra* notes 165–191 and accompanying text.

²³⁰ See Eubanks, *supra* note 1, at 309.

²³¹ See *id.*; Reinert, *supra* note 6, at 1736.

²³² See Reinert, *supra* note 6, at 1736–38.

wisdom of their counties' experiences with local agricultural preservation ordinances.²³³

Through gradual exploration, states may improve the allocation of farming resources to preserve their cultural heritage and natural environment.²³⁴ Rigid limitations and bans on corporate farming have failed to realize the goals of cultural and environmental preservation.²³⁵ States will need to alter the language in their right-to-farm statutes to create agricultural advisory boards when appropriate and empower those boards to consider the totality of a farm's circumstances.²³⁶ Hopefully, these changes will allow states to prioritize the most deserving farms without causing economic hardship.²³⁷

CONCLUSION

Changing agricultural demographics will continue despite the best efforts of right-to-farm statutes, but legislatures can improve right-to-farm statutes by allowing agricultural councils to favor medium-sized farms.²³⁸ The economic efficiencies of mass production will continue to cause large farms to increase in number.²³⁹ Nevertheless, legislative attempts to design statutes that protect medium-sized farms can be more effective.²⁴⁰ An increasing number of large farms offer economic benefits and a reliable food supply.²⁴¹ Legislatures should therefore not attempt to ban corporate farming, but rather should provide nuisance protections to medium-sized farms.²⁴² Agricultural preservation boards are currently empowered to make decisions only on agricultural practices.²⁴³ Legislatures should expand the powers of their agricultural preservation boards to consider the local circumstances and the needs

²³³ See *id.* at 1738.

²³⁴ *Id.* at 1735–38; see also Centner; *supra* note 2, at 110 (suggesting that regulatory solutions can prevent litigation).

²³⁵ See *supra* notes 165–191 and accompanying text.

²³⁶ See Reinert, *supra* note 6, at 1736. See generally N.Y. AGRIC. & MKTS. LAW §§ 308, 309 (McKinney 2011) (implementing a basic frame work to evaluate “[s]ound agricultural practices”).

²³⁷ See *id.* at 1737.

²³⁸ See *id.* at 1737–38.

²³⁹ See Centner, *supra* note 2, at 90.

²⁴⁰ See Reinert, *supra* note 6, at 1735–38.

²⁴¹ See Centner, *supra* note 2, at 90–91.

²⁴² See Reinert, *supra* note 6, at 1737. See generally N.Y. AGRIC. & MKTS. LAW §§ 308, 309 (McKinney 2011).

²⁴³ See Reinert, *supra* note 6, at 1737. See generally N.Y. AGRIC. & MKTS. LAW §§ 308, 309 (creating and empowering an agricultural advisory council).

of the individual farmer.²⁴⁴ In this way, the economic, agricultural, and social role of small farms will be protected for generations to come—thus fulfilling the motivations of agricultural preservation statutes.

²⁴⁴ See Reinert, *supra* note 6, at 1737. See generally N.Y. AGRIC. & MKTS. LAW §§ 308, 309.

APPENDIX

Figure 1a: New York Farms by Size:

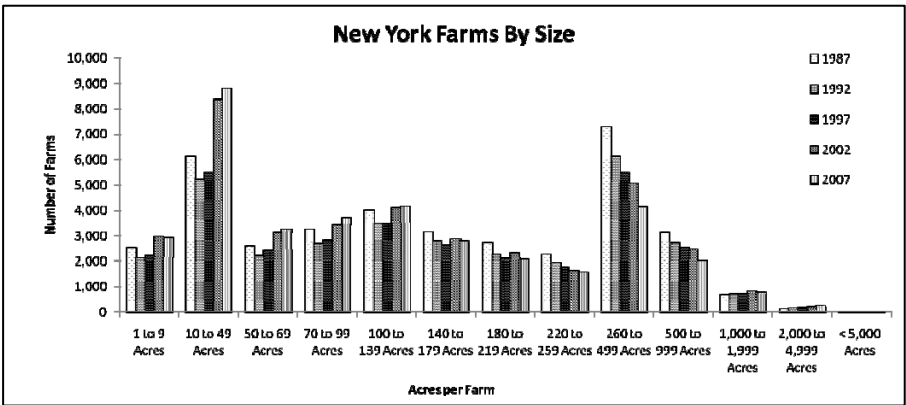


Figure 1b: New York Farms by Economic Class:

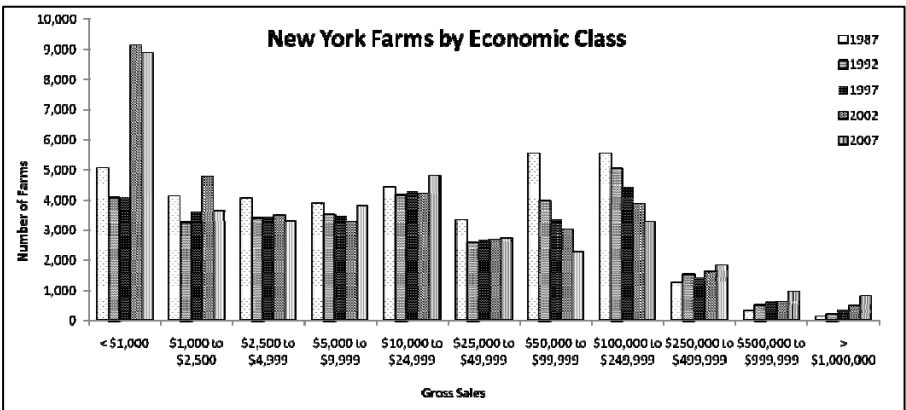


Figure 2a: Nebraska Farms by Size:

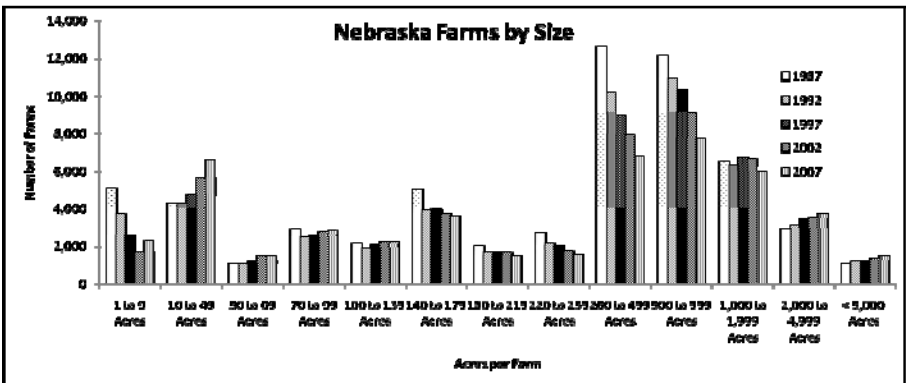


Figure 2b: Nebraska Farms by Economic Class:

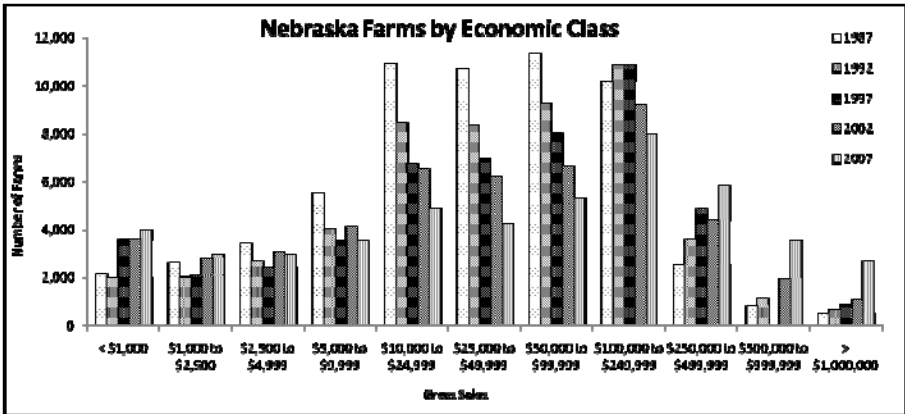


Figure 3a: Minnesota Farms by Size:

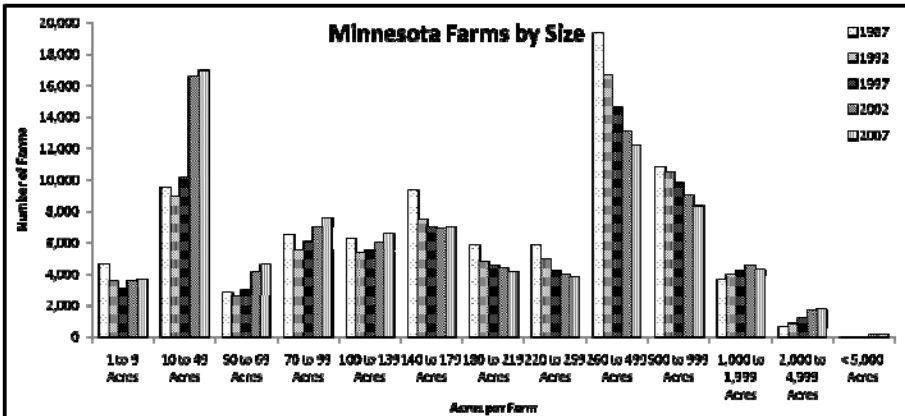
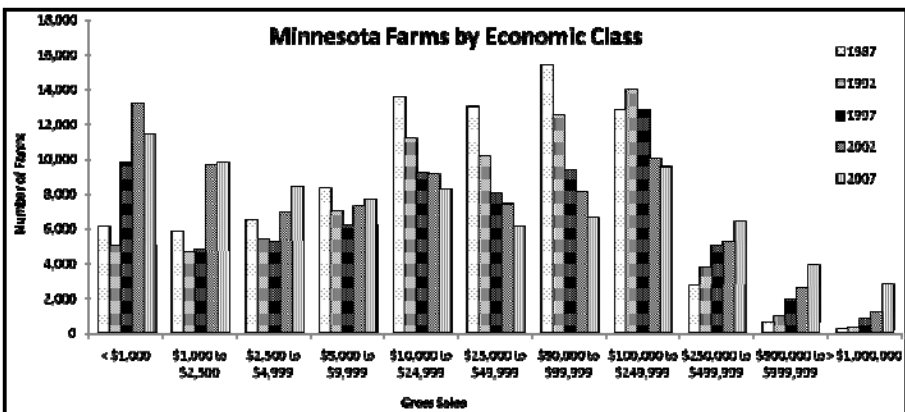


Figure 3b: Minnesota Farms by Economic Class:



Size of Farms	1987	1992	1997	2002	2007	% Change from 1987 to 2007
1 to 9 Acres	2,517	2,129	2,226	2,959	2,914	15.8
10 to 49 Acres	6,114	5,201	5,499	8,359	8,799	43.9
50 to 69 Acres	2,603	2,187	2,402	3,102	3,230	24.1
70 to 99 Acres	3,254	2,704	2,786	3,415	3,684	13.2
100 to 139 Acres	4,008	3,482	3,482	4,109	4,158	3.7
140 to 179 Acres	3,126	2,774	2,649	2,848	2,775	-11.2
180 to 219 Acres	2,709	2,257	2,084	2,308	2,061	-23.9
220 to 259 Acres	2,246	1,928	1,752	1,591	1,537	-31.6
260 to 499 Acres	7,289	6,120	5,491	5,078	4,141	-43.2
500 to 999 Acres	3,112	2,713	2,530	2,457	2,014	-35.3
1,000 to 1,999 Acres	654	680	688	812	760	16.2
2,000 to 4,999 Acres	106	125	154	194	243	129.2
> 5,000 Acres	5	6	14	23	36	620.0
1 to 99 Acres	14,488	12,221	12,913	17,835	18,627	28.6
100 to 999 Acres	22,490	19,274	17,988	18,391	16,686	-25.8
> 1000 Acres	765	811	856	1,029	1,039	35.8

Total Sales	1987	1992	1997	2002	2007	% Change from 1987 to 2007
< \$1,000	5,051	4,056	4,071	9,130	8,884	75.9
\$1,000 to \$2,500	4,117	3,268	3,636	4,802	3,622	-12.0
\$2,500 to \$4,999	4,061	3,389	3,424	3,496	3,291	-19.0
\$5,000 to \$9,999	3,892	3,536	3,484	3,283	3,809	-2.1
\$10,000 to \$24,999	4,426	4,156	4,269	4,203	4,809	8.7
\$25,000 to \$49,999	3,337	2,601	2,673	2,695	2,746	-17.7
\$50,000 to \$99,999	5,560	3,973	3,335	3,017	2,292	-58.8
\$100,000 to \$249,999	5,554	5,053	4,442	3,876	3,271	-41.1
\$250,000 to \$499,999	1,262	1,535	1,441	1,616	1,836	45.5
\$500,000 to \$999,999	333	518	639	646	970	191.3
> \$1,000,000	150	221	343	491	822	448.0
\$1 to \$9,999	17,121	14,249	14,615	20,711	19,606	14.5
\$10,000 to \$249,999	18,877	15,783	14,719	13,791	13,118	-30.5
> \$250,000	1,745	2,274	2,423	2,753	3,628	107.9

Size of Farms	1987	1992	1997	2002	2007	% Change from 1987 to 2007
1 to 9 Acres	5,090	3,698	2,591	1,656	2,270	-55.4
10 to 49 Acres	4,296	4,302	4,733	5,664	6,581	53.2
50 to 69 Acres	1,101	1,074	1,174	1,483	1,456	32.2
70 to 99 Acres	2,875	2,510	2,557	2,732	2,825	-1.7
100 to 139 Acres	2,140	1,913	2,058	2,247	2,232	4.3
140 to 179 Acres	5,050	3,911	3,975	3,718	3,591	-28.9
180 to 219 Acres	1,987	1,659	1,678	1,647	1,507	-24.2
220 to 259 Acres	2,706	2,148	2,038	1,742	1,576	-41.8
260 to 499 Acres	12,627	10,196	8,932	7,921	6,755	-46.5
500 to 999 Acres	12,153	10,966	10,338	9,049	7,717	-36.5
1,000 to 1,999 Acres	6,494	6,283	6,717	6,632	5,965	-8.1
2,000 to 4,999 Acres	2,906	3,091	3,439	3,497	3,735	28.5
> 5,000 Acres	1,077	1,172	1,224	1,367	1,502	39.5
1 to 99 Acres	13,362	11,584	11,055	11,535	13,132	-1.7
100 to 999 Acres	36,663	30,793	29,019	26,324	23,378	-36.2
> 1000 Acres	10,477	10,546	11,380	11,496	11,202	6.9

Total Sales	1987	1992	1997	2002	2007	% Change from 1987 to 2007
< \$1,000	2,099	1,979	3,577	3,559	3,964	88.9
\$1,000 to \$2,500	2,595	1,987	2,081	2,793	2,936	13.1
\$2,500 to \$4,999	3,405	2,664	2,394	3,050	2,911	-14.5
\$5,000 to \$9,999	5,515	4,021	3,497	4,118	3,515	-36.3
\$10,000 to \$24,999	10,923	8,445	6,733	6,489	4,882	-55.3
\$25,000 to \$49,999	10,681	8,362	6,962	6,187	4,221	-60.5
\$50,000 to \$99,999	11,305	9,274	8,005	6,601	5,292	-53.2
\$100,000 to \$249,999	10,188	10,850	10,852	9,177	7,979	-21.7
\$250,000 to \$499,999	2,512	3,573	4,851	4,374	5,828	132.0
\$500,000 to \$999,999	779	1,109	1,636	1,938	3,531	353.3
> \$1,000,000	500	659	866	1,069	2,653	430.6
\$1 to \$9,999	13,614	10,651	11,549	13,520	13,326	-2.1
\$10,000 to \$249,999	43,097	36,931	32,552	28,454	22,374	-48.1
> \$250,000	3,791	5,341	5,717	7,381	12,012	216.9

Table 3a: Minnesota Farms by Size

Size of Farms	1987	1992	1997	2002	2007	% Change from 1987 to 2007
1 to 9 Acres	4,613	3,517	3,090	3,591	3,687	-20.1
10 to 49 Acres	9,481	8,927	10,104	16,546	16,927	78.5
50 to 69 Acres	2,808	2,595	2,987	4,089	4,570	62.7
70 to 99 Acres	6,534	5,501	6,033	6,983	7,577	16.0
100 to 139 Acres	6,272	5,385	5,523	5,999	6,556	4.5
140 to 179 Acres	9,333	7,486	6,992	6,884	6,976	-25.3
180 to 219 Acres	5,812	4,818	4,544	4,350	4,155	-28.5
220 to 259 Acres	5,862	4,956	4,210	3,992	3,813	-35.0
260 to 499 Acres	19,289	16,621	14,611	13,030	12,220	-36.6
500 to 999 Acres	10,814	10,497	9,781	8,986	8,323	-23.0
1,000 to 1,999 Acres	3,619	3,913	4,251	4,554	4,264	17.8
2,000 to 4,999 Acres	611	806	1,165	1,715	1,767	189.2
> 5,000 Acres	31	57	76	120	157	406.5
1 to 99 Acres	23,436	20,540	22,214	31,209	32,761	39.8
100 to 999 Acres	57,382	49,763	45,661	43,241	42,043	-26.7
> 1000 Acres	4,261	4,776	5,492	6,389	6,188	45.2

Table 3b: Minnesota Farms by Economic Class

Total Sales	1987	1992	1997	2002	2007	% Change from 1987 to 2007
< \$1,000	6,076	5,054	9,829	13,181	11,410	87.8
\$1,000 to \$2,500	5,839	4,671	4,818	9,662	9,775	67.4
\$2,500 to \$4,999	6,509	5,387	5,260	6,959	8,434	29.6
\$5,000 to \$9,999	8,293	7,028	6,179	7,289	7,696	-7.2
\$10,000 to \$24,999	13,588	11,187	9,207	9,130	8,261	-39.2
\$25,000 to \$49,999	12,983	10,168	8,033	7,390	6,127	-52.8
\$50,000 to \$99,999	15,385	12,482	9,402	8,126	6,648	-56.8
\$100,000 to \$249,999	12,830	13,958	12,839	10,018	9,537	-25.7
\$250,000 to \$499,999	2,716	3,816	5,046	5,289	6,412	136.1
\$500,000 to \$999,999	625	974	1,933	2,611	3,901	524.2
> \$1,000,000	235	354	821	1,184	2,791	1,087.7
\$1 to \$9,999	20,411	17,104	21,904	31,804	31,626	54.9
\$10,000 to \$249,999	50,249	40,865	32,821	31,935	28,732	-42.8
> \$250,000	3,576	5,144	7,800	9,084	13,104	266.4

