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Abstract

As the economic viability of utility-scale renewable energy systems has grown through the past decades, wind and solar developers are increasingly interested in placing projects on farmland. While landowners, communities and developers gain benefits from rural energy developments, community reaction to these projects is often mixed, leaving farmers and developers vulnerable to nuisance lawsuits against their renewable energy systems from nearby landowners. To alleviate this burden, proponents of agriculturally based renewable energy projects have suggested applying existing state Right-to-Farm laws that protect farmers from nuisance claims to renewable energy systems on farmland. To understand the viability of this proposal, this study analyzes each of the 50 state's Right-to-Farm laws for language that would protect new technological developments, such as a wind or solar farm, on farmland from nuisance lawsuits and local ordinances. This research concludes that while some states Right-to-Farm legislation includes language that could potentially protect renewable energy developers from lawsuits, no existing state law would provide certainty of protection to developers, which could hinder investment in rural renewable energy project.

Introduction

Right-to-Farm laws were popularized in the 1970s to protect farmers from debilitating nuisance lawsuits (Bramen, 2011). At the time, suburban developments were expanding and encroaching upon rural areas, exposing farmers to new neighbors who had strong interests in suing to prevent noxious agricultural practices (Tovar, 2019). While the exact language of Right-to-Farm acts varies from state to state, all of the laws aim to protect farmers engaging in typical agricultural activities from these nuisance lawsuits in order to protect states' agricultural economies (Tovar, 2019).

Today, potential renewable energy developments present new challenges for agricultural communities. With vast improvements in the economic viability of renewable energy systems, many energy developers are offering contracts to farmers to lease their land for wind and solar installations (Bao, 2018). These contracts are often an attractive option for landowners (Bao, 2018). They offer a reliable source of income for farming families for several decades, and typically, farmers make higher profits by leasing their land to energy companies than they would if they continued to produce crops (Greene, 2019).

In addition to the benefits for landowners, wind and solar installations also generate increased tax revenue for their surrounding communities, provide new jobs in construction and energy system maintenance for local residents, and decrease their state's overall reliance on fossil fuels (Bassette & Depew, 2019). However, despite these benefits, new renewable energy systems are not universally popular in their host communities. Often, neighboring residents object to the developments, arguing that they are a detriment to the aesthetics, environment and security of their area (Uebelhor, Hintz, Mills & Randall, 2021). If landowners and renewable energy companies are consistently burdened by nuisance lawsuits from neighboring property

owners, they will be discouraged from investing in new projects, stalling the growth of agriculturally based wind and solar energy projects (Marandola, 2012). For this reason, some proponents of renewable energy have suggested applying existing Right-to-Farm anti-nuisance laws to protect farmers and developers from lawsuits that threaten renewable energy development expansion (Marandola, 2012; Spencer, 2014). To better understand the practicality and legality of these suggestions, this paper analyzes existing Right-to-Farm legislation throughout all 50 states for language that could be applied to renewable energy systems.

Literature Review

There are several cases throughout the United States in which nuisance law was utilized to successfully challenge and stall renewable energy developments. In *Rose v. Chaikin* (1982), the defendant constructed a turbine on their property in a residential neighborhood that was found to be a nuisance because it was "out of place" in the neighborhood and produced disruptive noise. *Burch v. NedPower Mount Storm* (2017) supports this conclusion, ruling that the noise and flicker produced by a windfarm, in addition impact on neighboring property values and potential safety threats, constituted a nuisance under West Virginia law. Another ruling from the Kansas Supreme Court upheld a county-wide ban on wind energy projects, supporting the argument that the potential negative environmental impact of a wind development presented a viable nuisance to the county (*Zimmerman v. Board of County Commissioners*, 2009). As most judges are hesitant to set a precedent based on a variable as subjective visual appeal, there are few examples of cases in which a neighboring property owner successfully argued that a renewable energy development constituted a nuisance solely because of its aesthetic impact (McEowen, 2017). For this reason, many nuisance arguments against solar facilities on the basis aesthetic interference have failed (McEowen, 2017). However, in *Myrick v. Peck Electric*

Company (2017), the Vermont Supreme Court noted that if the claimant could prove that reflected light from a solar farm disrupted their use of their own property, they could make a successful nuisance claim against a nearby solar development.

Given the abundance of legal precedence for successful nuisance arguments against both wind and solar energy developments on farmland, renewable energy proponents and legal scholars have suggested protecting these projects with new anti-nuisance legislation in order to facilitate their growth. Marandola (2017) argues that the language of most states' current Right-to-Farm legislation does not apply to energy production. Marandola (2017) suggests that lawmakers create a new act that models the Generally Accepted Practices regulations that many states developed in the late 20th century to define what farming practices are acceptable. Marandola argues that creating a similar document for wind and solar would protect farmers and renewable energy developers from nuisance suits while simultaneously regulating their actions to protect the interests of local communities. Hays (2017) agrees with Marandola that many current Right-to-Farm acts would fail to protect energy developments, as new installations would be put into place after the time periods protected by existing legislation. These arguments have prompted some pro-renewable energy legislators to suggest implanting new amendments that include energy production to their state's Right-to-Farm act (Spencer, 2014; Ballotpedia, n.d.). However, there is a lack of existing research that analyzes the current potential of each state's Right-to-Farm act to protect renewable energy developments on farmland. With potential critiques and legal challenges in mind, this paper aims to illuminate which states have provisions in their Right-to-Farm legislation that could potentially be applied to prevent nuisance lawsuits against wind and solar installments on farmland in order to facilitate a better understanding of the future of renewable energy anti-nuisance law.

Methods

This paper reviews the Right-to-Farm acts in each of the fifty states, specifically searching for language relating to energy, noise and technology in order to investigate which states' legislation could potentially be utilized as anti-nuisance justification for wind or solar developments. This research also noted the states with Right-to-Farm acts that preempt local laws and ordinances that could be utilized to mitigate legal challenges to solar and wind developments from local governmental authorities. Lastly, this paper analyzed each states' specifications on the established date of operation of projects to understand if a new development, such as a renewable energy facility, would be covered under existing Right-to-Farm laws. There is great variance among the states on when the date of the farm operation begins and whether or not expansion or additions to the farm are covered. In some states, where expansions are covered, the farm must be established for one year before it is granted protection. In other states, where expansions are not protected, wind turbines and solar developments could expose previously shielded farms to new community nuisance claims. Below, Table 1 illustrates how each state's Right-to-Farm act compares in this paper's established criterion. Additionally, this paper highlights eight states' Right-to-Farm bills below that have the greatest potential to protect new renewable energy developments on farmland from nuisance suits.

Table 1: Qualities of Right-to-Farm Acts Across All 50 States

State	Energy mentioned	Noise mentioned	Technology mentioned	Preemption of local law	Established Date of Operation (Key Below)
Alabama					2
Alaska			x	x	4
Arizona					1
Arkansas			x	x	2
California				x	6
Colorado			x	x	4
Connecticut		x			3
Delaware					2
Florida		x		x	2
Georgia			x		2
Hawaii		x			5
Idaho		x		x	2
Illinois					2
Indiana			x		3
Iowa		x			4
Kansas					4
Kentucky			x	x	2
Louisiana				x	3
Maine		x		x	4
Maryland		x			2
Massachusetts		x			2
Michigan		x	x	x	4
Minnesota			x		4
Mississippi					2
Missouri					2
Montana					1
Nebraska					1
New Hampshire					2
New Jersey	x	x			5
New Mexico			x	x	2
New York	x	x		x	5
North Carolina			x	x	2
North Dakota				x	2
Ohio		x		x	1
Oklahoma			x		7

Oregon		x		x	1
Pennsylvania			x	x	3
Rhode Island		x		x	5
South Carolina			x	x	4
South Dakota					4
Tennessee		x			5
Texas				Partially	4
Utah				x	5
Vermont			x		3
Virginia				x	1
Washington		x	x		1
West Virginia			x	x	2
Wisconsin			x		1
Wyoming					1

1= Established before plaintiff/nonfarmer moved in (silent on expansion),
2= Established 1 year before plaintiff complained (silent on expansion),
3= Must remain unchanged or unexpanded for at least a year prior to a claim
4= Expansion or change acceptable,
5= Not specified in law
6= Unique to California, established 3 years before plaintiff complained (silent on expansion)
7= Unique to Oklahoma, established 2 years before plaintiff complained (silent on expansion)

Specific States

Alaska**:** Alaska's Right-to-Farm act preempts local ordinances and protects existing, changed or new technologies, practices and procedures. Additionally, existing Alaskan farmland nuisance protection cannot be revoked by expansion of development of new technologies. All machinery, equipment and appurtenances used for commercial farm production are protected (National Agricultural Law Center, 2020). As a result, new renewable energy technology installed on an Alaska farm may be considered to protected equipment. However, it could be argued that renewable energy is not an established commercial farm product, and therefore, the legislation would not apply.

Kentucky**:** Kentucky's Right-to-Farm act also preempts local ordinances. Under the definition of "agricultural operation," any methods for the farm to obtain a monetary profit are included and protected by the legislation (National Agricultural Law Center, 2020). Agricultural operation also covers sustainable agriculture practices, which can include the use of new technologies, in order to "improve the ability of future generations to meet their needs while advancing progress towards environmental, social and economic goals of… rural communities" (National Agricultural Law Center, 2020). It could be argued that solar panels or wind turbines help to facilitate these sustainable agricultural goals, as they bring jobs and tax benefits to rural areas while improving the sustainability of energy production in the state (Krishnaswami, 2018). Additionally, renewable energy production is a method of resource manipulation to produce "monetary profit" and could fall under Kentucky's definition of "agricultural operation." However, it should be noted, despite the applicability of the Kentucky's Right-to-Farm Act's language to renewable energy systems, the law states that in order to be protected, the development must have been established more than a year before a plaintiff files a complaint (National Agricultural Law Center, 2020). This timeline leaves any farmland with a renewable energy development that could be protected under Kentucky's Right-to-Farm laws exposed to nuisance suits throughout the first year of the system's operation.

Michigan**:** Michigan's Right-to-Farm act preempts local ordinances and protects farmers from suits following the adoption of new technology. It also prevents neighboring landowners from suing farmers due to the noise of their operations, which could potentially be applied to the noise

produced by wind turbines. Under Michigan law, the operation of machinery and equipment is protected as well as the "inputs associated" with farming (National Agricultural Law Center, 2020). Additionally, changes in a farm's operation, including "the adoption of new technology" cannot be found as a nuisance if the land was previously utilized as protected farmland before the change (National Agricultural Law Center, 2020). All of these provisions offer encouraging potential legal support for renewable energy developers looking to avoid nuisance suits if they invest in a wind or solar energy system on Michigan farmland. However, it should be noted that while the language of the Michigan act could potentially be applied to wind and solar facilities on farmland, when a bill was proposed to officially include wind energy production as protected farming, it did not pass through the state legislature (Spencer, 2014).

New Jersey: Biomass, solar and wind energy generation are permissible farming activity under the New Jersey's Right-to-Farm act, making New Jersey the only state that provides explicit protection for renewable energy (National Agricultural Law Center, 2020). However, the act is bound to local ordinances, and localities could override the state's protection of renewable energy systems from nuisance claims (National Agricultural Law Center, 2020). Therefore, even though the statewide bill offers renewable energy developers the assurance of protection from nuisance suits, local governments could still overrule the state legislation and allow a nuisance claim against a New Jersey farmland renewable energy project.

New York: New York's Right-to-Farm act preempts local ordinances and provides farmers with protection from noise production nuisance claims. Land that is used in support of farm operations is also protected (National Agricultural Law Center, 2020). While land that is used for

wind energy generation is no longer considered farmland under New York law, it is possible that even if the parcel of the land with turbines is no longer considered agricultural, that it could still be considered "in support" of the farm and thus gain protection under the act (National Agricultural Law Center, 2020).

Pennsylvania: Pennsylvania's Right-to-Farm act preempts local ordinances and protects "new activities, practices, equipment and procedures consistent with technological development" (National Agricultural Law Center, 2020). Additionally, the definition of an "agricultural commodity" includes "any product produced on a farm intended for *human consumption*" (National Agricultural Law Center, 2020). Since new developments are permitted and the energy produced by a wind or solar system on a farm will be consumed, it is possible that the language of the existing act could be applied to argue that renewable energy systems on farms are exempt from nuisance claims in Pennsylvania.

Rhode Island: Rhode Island's Right-to-Farm act preempts local ordinances and protects farmers against noise complaints from neighbors (National Agricultural Law Center, 2020). While the act does not mention the adoption of new technology, it protects farms that are of "mixed-use" (National Agricultural Law Center, 2020). This includes "other forms of enterprise," such displays of antique vehicles, tours, classes, feeding and viewing of animals (National Agricultural Law Center, 2020). While renewable energy generation does not fall directly in line with the given examples of other enterprises, it could be argued that since solar and wind energy developments provide farmers with another source of income, they can be classified as another

"form of enterprise" on a "mixed-use" farm and are protected from nuisance claims under Rhode Island law.

South Carolina: South Carolina's right-to-farm act preempts local ordinances and protects the adoption of new technologies or new methods of farming. Additionally, required "setback distances" for farms can be reduced or waived by the Department of Health and Environmental Control in order to facilitate "innovative and alternative" technologies (National Agricultural Law Center, 2020). It is possible that renewable energy systems could fall under this definition of "innovative and alternative," but it remains to be seen if the adoption of a renewable energy system would be protected by the South Carolina law as a new method of farming. It could be argued that renewable energy systems are a new method of income production for farmers but do not constitute a method of farming. Under this argument, renewable energy systems would not be protected from nuisance claims according to South Carolina law.

Conclusion

While this paper identifies several states in which an existing Right-to-Farm act could potentially protect an agricultural solar or wind energy development from a nuisance claim, no state's existing legislation offers any certainty of protection to renewable energy developers. While some identified states' Right-to-Farm laws have language that could provide developers with a strong legal argument against a nuisance claim, the ambiguities of where each state's law stands leaves renewable energy developers exposed to potential suits. As argued by Marandola (2012), without clarification, developers will continue to remain wary of lawsuits, potentially stalling the growth of renewable energy development throughout rural America. If lawmakers

want to ensure that developers, landowners and communities understand their legal rights in contesting or advocating for renewable energy developments on farmland, they should consider updating their Right-to-Farm laws to explicitly state their opinion on the legality of nuisance claims against solar and wind energy developments on farmland.

Additionally, it is important to consider that while official protection against nuisance claims would protect renewable energy developments on farmland, barring communities from attempting to receive redress for the harms they perceive to endure from solar and wind facilities may not improve community support for renewable energy. In many localities, solar and wind developments are approved by local officials who are heavily influenced by their constituents' opinions, meaning that a community that feels slighted by an energy development may be less likely to approve the next renewable energy project that comes to their town. For this reason, it is also vital that developers not only work to protect themselves from lawsuits, but also focus on collaborating with rural communities in order to ensure that local residents are supportive of their endeavors.

Future research is needed to better understand the best language for including state opinions on nuisance suits against renewable energy developments on farmland in existing Right-to-Farm legislation. Additionally, research on the community reactions to states granting nuisance protection to solar and wind projects on formally agricultural land could help states and developers better understand how to include all stakeholders in a future transition to rural renewable energy development. By clarifying these points of confusion, researchers can hope to offer developers, landowners and community members with a stronger understanding of their rights as renewable energy systems on farmland expand across the country.

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