

SURVEY OF ILLINOIS LAW: CONSERVATION, ENERGY AND FOOD DEVELOPMENTS IN AGRICULTURAL LAW

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The field of agricultural law is as vast as the prairie which greeted the first settlers of Illinois. The potential vastness of this subject matter creates a special challenge when authors attempt to highlight new state developments in agricultural law. The approach taken by the authors in this special “Survey of Illinois Law” issue began by examining a set of laws emanating from the Illinois General Assembly in 2007, including those brought to our attention by the Illinois Farm Bureau¹ and our colleagues on the Agricultural Law Section Council of the Illinois State Bar Association. The authors then searched for general themes under which they could organize the significant new state legislation related to agriculture and its natural resource base. The result of this effort is below. Section I analyzes new legislation grouped under three broad themes: Conservation, Energy, and Food. Under the Conservation theme, the authors describe new legislation related to the property taxation of woodlands, changes to the Conservation 2000 program, “prescribed burning” of natural areas, and conservation projects supported by the Illinois Finance Authority. Under the Energy theme, the authors describe a variety of alternative-energy legislative efforts, with significant accomplishments in the areas of wind energy, biofuels and “clean coal” technologies. Under the Food theme, the authors examine new legislation intended to encourage both “local food” and “organic food” systems as a special niche for Illinois food growers,

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and legislative and judicial developments related to the last operating horse meat slaughter facility in the United States—Cavel International, Inc. located in DeKalb, Illinois.

In Section II the authors discuss other legislative developments related to agriculture. The topics are wide-ranging, including livestock and companion animals, damages from mine subsidence or oil and gas exploration, regulatory and research initiatives regarding ammonium nitrate (a valuable fertilizer that can be used in bomb making), ATVs, child seat belts in trucks, agriculture in the classroom, municipal annexation agreements, and the Emerald Ash Borer.

In Section III, the authors return to an issue highlighted in the 2005 Survey of Illinois Law—immunity from negligence suits as a way of encouraging rural landowners to make private lands available to members of the public for recreational purposes. The authors report on unsuccessful 2007 legislative efforts to amend the Illinois Recreation Use Act. The goal of encouraging landowners to open their lands for a broad set of recreational activities, not just hunting and recreational shooting, remains elusive.

In Section IV, the authors offer some concluding thoughts, including an acknowledgment that this survey of new Illinois legislation related to agriculture will have omitted some legislation that others would have included. Such omissions are inevitable given the breadth of agricultural law.

I. SELECTED AGRICULTURAL LAW DEVELOPMENTS ADDRESSING CONSERVATION, ENERGY AND FOOD

Among the more significant or controversial developments in agriculture were initiatives related to conservation, bio-fuels and other alternative energy sources, foods which are locally-grown or organic, and the slaughter of horses for human consumption. Selected developments are described below.

A. Conservation and Farmland Preservation: Property Tax Assessments, Land Management Practices and Public Projects

In addition to productive farmland, Illinois' rural areas contain some of the state's most valuable ecosystems, including rare prairies and wetlands. To assure the protection of limited farmland and unique environmental resources for the economic and social well-being of the citizens of Illinois, it is in the state's best interest to effectively conserve and manage these lands.²

2. 35 ILL. COMP. STAT. 200/10-400(b) (2007).

1. Conservation-Oriented Tax Assessments—Assessing Woodlands and Other Open Spaces

Economic pressures on rural landowners, potentially exacerbated by the property tax system, make conserving farmland, woodlands and other open space financially challenging. Illinois' farmland assessment statute attempts to encourage the preservation of farmland by assessing qualifying land based on its agricultural value, rather than its higher fair market development value.³ In 2006, the Illinois Department of Revenue implemented Bulletin 810, a publication containing data provided by the Farmland Technical Advisory Board and used by county assessors in implementing the state-mandated formula for assessing farmland.⁴ In addition to updating productivity indexes for various soils, the Farmland Technical Advisory Board recommended that county assessors assure that only land qualifying as "farmland" under the statute be assessed using the formula.⁵ As a consequence, the property tax assessment on some wooded acreage unconnected to farming operations would increase to 33 1/3% of its market value rather than the lower farmland assessment.⁶ In response, the General Assembly created the Wooded Land Assessment Task Force.⁷ The Task Force's purpose was to gather information and make recommendations to the Governor and General Assembly regarding procedures and policies for assessment of wooded land and the assessment of property under a certified forestry management program.⁸

To provide a legislative break to rising non-farm woodland assessments and to otherwise alleviate pressures to convert open lands into more intensive uses, Senator Sullivan introduced Senate Bill 17 on January, 31, 2007.⁹ Representative Reitz sponsored the bill in the House, which Governor Blagojevich signed Public Act 95-633 on October 1, 2007.¹⁰

Public Act 95-633 created the Conservation Stewardship Law, which aims to encourage the conservation and management of undeveloped lands through tax incentives.¹¹ Under the Conservation Stewardship Law, the owner

3. See 35 ILL. COMP. STAT. 200/10-110 (2006).

4. See 35 ILL. COMP. STAT. 200/10-115 (2006).

5. See Wooded Acreage Assessment, available at <http://www.revenue.state.il.us/LocalGovernment/PropertyTax/woodland.pdf> (last visited January 16, 2007).

6. *Id.*

7. H.B. 95, 94th Gen. Assem., Reg. Sess. (Ill. 2006).

8. *Id.*

9. S.B. 17, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

10. SB 17 had eighteen co-sponsors in the Senate and nineteen co-sponsors in the House.

11. 35 ILL. COMP. STAT. 200/10-400(b) (2007).

of five or more contiguous acres of unimproved land, including woodlands, prairie, wetlands, or other undeveloped land not used for commercial or residential purposes, may apply for a special valuation of the land by submitting a conservation management plan to the Illinois Department of Natural Resources (“IDNR”).¹² Upon IDNR approval of the plan, the land shall be valued at five percent of its fair cash value for property tax purposes.¹³ The special valuation can be withdrawn if IDNR determines the property no longer meets the criteria for unimproved land or if the landowner fails to respond to IDNR requests for data regarding the use of the land.¹⁴ If the landowner does not comply with the conservation management plan, the landowner must pay taxes on the land at the fair cash value.¹⁵ For continuity purposes, the sale of the land does not change its valuation unless the sale results in a partition of less than five continuous acres or there is a change in the use of the land.¹⁶

Public Act 95–633 also created the Wooded Acreage Assessment Transition Law¹⁷ based on the findings of the Wooded Land Assessment Task Force.¹⁸ The Wooded Acreage Assessment Transition Law applies to parcels of five or more contiguous wooded acres that do “not qualify as wasteland, cropland, permanent pasture, or other farmland” and are “not managed under a forestry management plan.”¹⁹ Wooded land classified as farmland for tax purposes in 2006 shall be assessed under the Act by multiplying the fair cash value of the land by a property tax transition percentage.²⁰ The county assessment officer will calculate the transition percentage for the property by dividing the property’s 2006 equalized assessed value as farmland by the 2006 fair cash value of the property.²¹

Public Act 95–633 and its property tax implications will have both positive and negative effects on the economy, schools and other public services, and environment of rural communities. Landowners will have a strong tax incentive to conserve their woodlands, prairies, and wetlands. The preserving of undeveloped land has ecological and recreational²² benefits that

12. *Id.* § 200/10–415(a).

13. *Id.* § 200/10–420(a).

14. *Id.* § 200/10–430(a).

15. *Id.* § 200/10–435(a).

16. *Id.* § 200/10–440.

17. *See also id.* § 200/10–500.

18. *See* 35 ILL. COMP. STAT. 200/10–115 (2005).

19. 35 ILL. COMP. STAT. 200/10–505 (2007).

20. *Id.* § 200/10–510 (2007).

21. *Id.*

22. For a discussion of the recreational uses of open space within the context of the Illinois Recreational Use of Land and Water Areas Act, *see infra* Section III.

citizens across the state can enjoy. However, the accompanying decrease in property tax revenue will result in reduced funding for public schools and other public services in rural areas. Although counties may impose a sales tax of up to one percent for school facility purposes,²³ most local governments will likely have difficulty making up for the decrease in property tax revenue.

2. Conservation 2000 Programs

Changes to the Conservation 2000 program was another conservation-related development. Focusing on resources on private lands, the legislature originally passed the Conservation 2000 program in 1995 as a comprehensive effort to preserve and enhance Illinois' natural resources through a holistic, long-term approach.²⁴ The original bill²⁵ proposed a six year, \$100 million initiative. A 1999 amendment extended the Conservation 2000 program through 2009.²⁶ The Conservation 2000 Projects Fund and the Conservation 2000 Fund contained monies for use by the Illinois Department of Natural Resources, the Illinois Environmental Protection Agency and the Illinois Department of Agriculture "for purposes relating to natural resource protection . . . recreation, tourism, and compatible agricultural and economic development activities."²⁷ In order to extend and expand this popular program, Representative Reitz introduced House Bill 1780 on February 23, 2007, which Governor Blagojevich signed as Public Act 95-139 on August 13, 2007.²⁸

Public Act 95-139 renamed the Conservation 2000 Projects Fund as the Partners for Conservation Projects Fund²⁹; it also renamed the Conservation 2000 Fund as the Partners for Conservation Fund.³⁰ The Act broadens the uses to which the monies in the Funds may be put to include natural resource restoration, water quality protection and improvement, and land use and watershed planning.³¹ In order to integrate state and federal programs with

23. S.B. 835, introduced February 8, 2007 by Senator Crotty, creates the school facility occupation tax. Under S.B. 835, a county board may impose a sales tax of up to one percent for school facility purposes upon the approval of a majority of voters. The Governor vetoed S.B. 835 on August 27, but the House and Senate voted to overrule his veto, and S.B. 835 became law October 17, 2007. 55 ILL. COMP. STAT. 5/5-1006.7 (2007).

24. See Illinois Department of Natural Resources, Conservation 2000, <http://dnr.state.il.us/orep/C2000/> (last visited April 8, 2008).

25. Illinois Pub. Act 89-49, originating as S.B. 300, 89th Gen. Assem., Reg. Sess. (Ill. 1995).

26. See *id.*

27. 30 ILL. COMP. STAT. 105/6z-32(a) (2007).

28. Representatives Froehlich, Verschoore, and Phelps co-sponsored H.B. 1780. Senator Holmes was the chief sponsor in the Senate, where Senators Garrett and Sieben were co-sponsors.

29. 30 ILL. COMP. STAT. 105/5.412 (2007).

30. *Id.* § 105/5.411.

31. *Id.* § 105/6z-32(a).

Illinois' natural resource protection and restoration efforts, the Act allows moneys in the Funds to be used for partnering with private landowners, entities of local, state, and federal government, and non-profit organizations. The Act also extends the automatic transfer of money from the General Reserve Fund to the Partners for Conservation Fund through the year 2021.³²

The changes to the Conservation 2000 program should increase the effectiveness of the program and extend its benefits. Expanding the uses of the monies in the Funds, as well as the parties eligible to receive the funding, allows greater access to the program. Private landowners who might not have the money necessary to restore a wetland on their property may access the Partners for Conservation Fund. As much of Illinois' natural resources are in private ownership,³³ amendments to the Conservation 2000 program will enable state agencies and private citizens to better meet conservation goals by working together.

3. *Conservation Land Management Practices—Prescribed Burning*

The proper management of open spaces is crucial to their continued health and ecological function. Because most natural areas require periodic burning to remain ecologically healthy, prescribed burning is essential to the continued existence of Illinois forests, wetlands and prairies.³⁴ Prescribed burning purges invasive plant population, accelerates nutrient cycling, promotes oak regeneration, reduces the risk and severity of wildfires and improves the quality of wildlife habitat.³⁵

The Illinois Prescribed Burning Act,³⁶ Public Law 95–108, aims to encourage prescribed burning on private lands by preventing nuisance actions and establishing proper burning procedures. The Act provides that a properly conducted prescribed burn shall not be a nuisance as such actions are a property right of the landowner as long as natural vegetative fuels are used.³⁷ Prescribed burning, however, is not free from all potential liability. Upon

32. *Id.* § 105/6z–32(b).

33. See Bryan Endres & D.L. Uchtman, *The Latest Twist on the Illinois Recreational Use of Land and Water Areas Act: Clamping Down on Landowner Immunities*, 29 S. ILL. U. L. J. 579, 580 (2005) (discussing public-private allocation of potential recreational areas in Illinois and noting that Illinois ranks 46th nationally in the percentage of public land).

34. 525 ILL. COMP. STAT. 37/5(a) (2007).

35. *Id.*

36. Representative Moffitt introduced H.B. 1638 on February 22, 2007, and the Governor signed the bill into law August 13, 2007. H.B. 1638 had twelve co-sponsors in the House. Senator Frerichs sponsored the bill in the Senate, where there were thirteen co-sponsors.

37. 525 ILL. COMP. STAT. 37/15(c) (2007).

proof of negligence, the landowner and the person conducting the prescribed burn will be liable for damage or injury caused by the fire or its smoke.³⁸

Under the Act, one must obtain the written permission of the landowner, prepare a written plan for conducting the prescribed burn, and obtain approval of the plan by a certified prescribed burn manager. The certified burn manager must be on site at the time of the burn. In addition, those conducting the prescribed burn must notify local emergency services and make a reasonable attempt to notify the adjoining property owners.³⁹

Establishing procedures for prescribed burns (in effect, establishing best management practices) should encourage the proper execution of burns, increase public safety and improve environmental quality across the state. Requiring a certified prescribed burn manager's approval of a written plan and presence during the activity is intended to yield the maximum ecological benefit from the burn and to promote safety. More importantly, providing a state-sanctioned means for landowners to burn their open land should decrease instances of unapproved, damaging burns with unintended consequences. With increased public awareness of the benefits of burning, more landowners may turn to prescribed burning as a helpful land management technique.

4. *Illinois Finance Authority—Conservation Projects*

Public Act 95–697⁴⁰ amended the Illinois Finance Authority Act to increase the maximum outstanding principal on bonds.⁴¹ With respect to land use, the Act expanded the definition of “project” to include “conservation project,”⁴² defined as any project including the acquisition, construction, rehabilitation, maintenance, operation, or upgrade that is intended to create or expand open space or to reduce energy usage through efficiency measures.⁴³ Low-interest loans are available to individuals, business entities, private organizations and units of local government for conservation projects.⁴⁴ Conservation projects supported by the Illinois Finance Authority could have externalities beneficial to agricultural production or fund conservation-related projects on marginal agricultural land.

38. *Id.* § 37/15(b) (2007).

39. *Id.* § 37/15(a) (2007).

40. Pub. Act 95–697 originated as S.B.1327 and was sponsored and filed by Senator Jeffrey M. Schoenberg.

41. 20 ILL. COMP. STAT. 3501/845–5 (2007) (extending debt limits).

42. *Id.* § 3501/801–10(b) (2007) (adding conservation to authorized project).

43. *Id.* § 3501/801–10(ee) (2007) (defining conservation project).

44. *Id.* § 3501/825–12 (2007) (describing financing options).

B. Alternative Energy: Capturing Illinois' Natural Resources

Illinois is rich in energy resources, from its windy plains to its abundant coal resources to its bountiful corn and soybean crops. In order to provide clean, affordable energy to the citizens of Illinois, the state legislature in 2007 engaged in a variety of alternative-energy related efforts, with significant accomplishments in the areas of wind energy, biofuels and “clean coal” technologies. Of course, much work remains for all levels of government, as well as private citizens, to move toward energy independence and a meaningful reduction of carbon emissions. The following is a brief summary of the 2007 alternative energy-related legislative actions impacting agriculture.

1. *Wind Energy*⁴⁵

a. Zoning

Renewable energy resources generated from local sources such as wind power may benefit the state by reducing the load on the power grid, providing non-polluting sources of electricity generation, and creating jobs for local industries that can develop and distribute renewable energy products and technologies.⁴⁶ Of course, as with many new developments, wind generation is not without its critics. Although many arguments in opposition are of the “not in my backyard” genre, such as noise from the turbines, loss of scenic views, construction impact on roads,⁴⁷ others raise commercial or environmental concerns such as the disruption of established agricultural

45. For general information related to wind power opportunities in Illinois, see Illinois Wind Working Group at <http://www.wind.ilstu.edu/> (last visited July 8, 2008). For a national perspective, see generally, Jessica A. Shoemaker, Farmer's Legal Action Group, *Farmer's Guide to Wind Energy: Legal Issues in Farming Wind* available at <http://www.flaginc.org/topics/pubs/wind/FGWEcomplete.pdf> (last visited July 8, 2008).

46. H.B. 1550, 95th Gen. Assem. Reg. Sess. (Ill. 2007). In addition, Pub. Act 95-697 amended the Illinois Finance Authority Act to authorize the Illinois Finance Authority to issue state guarantees to lenders for loans to finance or refinance debts for specialized livestock operations that use anaerobic digestors to generate electricity. 20 ILL. COMP. STAT. 3501/830-50(a) (2007).

47. See Scott Miller, *Lawyer: Wind Farm Presents Hazards*, THE PANTAGRAPH (Bloomington) C1 (May 23, 2007) (noting noise pollution and “shadow pollution” from the “hypnotizing moving shadows from the turbines”); National Wind Coordinating Committee, *Wind Energy Environmental Issues* (Jan. 1997) available at <http://www.nationalwind.org/publications/wes/wes02.htm> (noting community impacts of wind generation farms) (last visited July 8, 2008).

practices (e.g., aerial spraying) or bird migration.⁴⁸ In order to reap the benefits of wind energy and minimize the impact on competing uses of the land and airspace, wind turbines must be situated properly. To facilitate the placement and regulation of wind farms, Representative Rose introduced H.B. 620 on February 5, 2007, which the Governor signed into law as Public Act 95–203 on August 16, 2007.⁴⁹

Public Act 95–203 allows local governments to establish standards for wind farms, including the height and number of devices.⁵⁰ Under the Act, counties may regulate the siting of wind farms and electric-generating wind devices in unincorporated areas of the county.⁵¹ A municipality may also regulate wind farms and electric-generating wind devices within its zoning jurisdiction, including the surrounding one and a half mile radius of unincorporated land.⁵² In addition, counties and municipalities must hold a public hearing not more than thirty days in advance of any siting decision.⁵³ Although certainly not a panacea for the controversy surrounding wind farm placement, consistency in wind farm design and mandatory public input in siting decisions may help.⁵⁴

b. Tax Assessment

Of course, wind farms will sprout from agricultural land only if it makes economic sense to devote areas of productive crop land to power generation. One problem confronting wind development opportunities in Illinois is the lack of a standardized property tax assessment for wind turbines and related equipment,⁵⁵ with wind energy projects highly contingent on the county and

48. See National Wind Coordinating Committee, *supra* note 47 (noting environmental and wildlife impacts of wind farms); Nijhuis, Michelle, *Selling the Wind*, AUDUBON MAGAZINE (Sept.–Oct. 2006) available at <http://magazine.audubon.org/features0609/energy.html> (noting impact of some wind farms on birds) (last visited July 8, 2008).

49. Representatives Franks and LaVia signed on as co-sponsors, and Senator Righter was the chief Senate sponsor, with Senator Koehler as a co-sponsor.

50. 55 ILL. COMP. STAT. 5/5–12020 (2007).

51. *Id.*

52. 66 ILL. COMP. STAT. 5/11–13–26 (2007).

53. 55 ILL. COMP. STAT. 5/5–12020 (2007), 66 ILL. COMP. STAT. 5/11–13–26 (2007).

54. Standard height and spacing of wind turbines could alleviate some public concerns that wind farms are an eyesore that detract from the beauty of the landscape. When all of the wind turbines and wind farms within a county conform to a common standard, the regularity of the structure may make them stand out less prominently from the landscape. Holding public hearings will facilitate public involvement in the siting process and prompt siting changes to alleviate some concerns.

55. See McGuire Woods Consulting, *Taxation of Wind Farms*, available at <http://www.wind.ilstu.edu/presentations/siting%20presentations/barry.pdf> (last visited July 8, 2008).

the opinion of the county tax assessor.⁵⁶ Legislators in the 2007 General Assembly session floated multiple proposals to address this problem and establish a standard method of assessing wind farms.⁵⁷

Public Act 95–644,⁵⁸ among other revenue related items, established a state-wide standard valuation of wind energy equipment of \$360,000 per Megawatt in 2007, adjusted for inflation.⁵⁹ Values may be adjusted for depreciation based on a twenty-five-year expected life so long as the depreciated value does not fall below thirty percent of the inflation-adjusted cost basis.⁶⁰ The owner of the wind energy equipment must retain an Illinois registered land surveyor and deliver a plat of the property to the county assessment officer.⁶¹ The property will receive a separate parcel identification number or numbers.⁶² Due to varying property tax rates by county, the Act does not create a uniform property tax for wind energy equipment. For example, tax rates in central Illinois may vary between an annual amount of \$8,400 per Megawatt (seven percent rate) to \$13,200 per Megawatt (greater than eleven percent rate).⁶³ Accordingly, additional proposals to further standardize wind farm assessments are likely in future legislative sessions.

56. *Id.*

57. H.B. 4142, in addition to a plethora of other property tax changes, proposed a wind energy property assessment that would value wind energy devices by subtracting the allowance for physical depreciation from the trended real property cost basis. *See* H.B. 4142, 95th Gen. Assem. Reg. Sess. (Ill. 2007). H.B. 4142 was introduced by Representative Hassert on September 26, 2007 and referred to the Rules Committee. The legislature took no further action on the bill. S.B. 698 proposed to value wind turbines based on the kilowatt-hour of electricity produced per year, with the wind turbine system assessed at 33 1/3% of the cash value. *See* S.B. 698, 95th Gen. Assem. Reg. Sess. (Ill. 2007). Senate Committee (Revenue) Amendment No. 1 deleted the bill's original content and replaced it with a place-holder section to add a new division to the property tax code concerning the valuation of wind-energy production facilities. *See* Senate Revenue Committee Amendment, March 14, 2007. Although the legislature extended the third reading of the bill two times, it was referred back to the Senate Rules Committee on December 3, 2007 without further action.

58. Pub. Act 95–644 (establishing Wind Energy Property Assessment at 35 ILL. COMP. STAT. 200/10). H.B. 644 passed the house on May 3, 2007. On August 6, 2007, The Senate Revenue Committee adopted Senate Committee Amendment No. 1, which inserted the wind energy equipment assessment provisions. After passing the Senate on August 9, 2007, the House concurred with the Senate amendments and passed the bill the following day. On September 20, 2007 the Governor issued an amendatory veto, which the House and Senate both overruled on October 12, 2007. The wind energy assessment provisions of the Act were not subject to the amendatory veto.

59. 35 ILL. COMP. STAT. 200/10–600 (2007).

60. *Id.*

61. *Id.* § 200/10–620 (2007).

62. *Id.*

63. Jesper Michaelsen, Presentation to Illinois Wind Working Group, Dec. 13, 2007 (Peoria, IL), available at <http://www.wind.ilstu.edu/presentations/siting%20presentations/MICHAELSEN.pdf> (last visited July 8, 2008).

c. Site Remediation

An often overlooked consideration for wind farm development is restoration of the land at the end of the turbine life cycle. Most property agreements (usually a wind-farm lease or easement) provide for infrastructure removal and land restoration upon termination of the project. If the original wind-power company no longer is in operation, however, responsibility for land restoration may fall on the landowner. This is not an insignificant undertaking. A 200–300 foot tower, supporting a wind turbine the size of a bus with three 100 to 150 foot rotor blades may weigh over 56 tons and require a substantial foundation.⁶⁴ A single wind turbine site may encompass a forty-two square foot gravel area over a 1,250 ton foundation of reinforced concrete.⁶⁵ Moreover, a wind farm may require as many of fifteen to twenty towers to justify the required transmission infrastructure.⁶⁶ In addition to land compaction, the infrastructure may impact surface and subsurface drainage (e.g., drainage tiles).⁶⁷

Senate Bill 1400,⁶⁸ as originally introduced, proposed a \$10,000 property tax assessment on each wind turbine in Illinois payable into a fund for the deconstruction of abandoned wind turbines—the Wind Energy Indemnity Fund.⁶⁹ The assessment obligation would fall on the owner of the wind turbine, payable in equal \$1000 installments over a period of ten years.⁷⁰ This is similar to the Illinois Grain Insurance Fund, in which sellers of grain (as well as grain elevators and banks holding warehouse receipts as collateral) remit a per bushel fee to the fund as insurance payable in the event of a grain elevator failure.⁷¹ During the legislative process, the wind turbine provisions were dropped from Senate Bill 1400 and replaced with language relating to annexation agreements between municipalities that border the Mississippi

64. See Eric Rosenbloom, *A Problem With Wind Power*, at 3, available at <http://www.aweo.org/ProblemWithWind.pdf> (last visited July 8, 2008).

65. See *id.*

66. See *id.*

67. See Don Uchtmann et al., *Energy and Agriculture: Legal and Tax Perspectives*, at 64–8, available at [http://www.farmdoc.uiuc.edu/farmincome/2007/pdfs/breakout\(Uchtmann\).pdf](http://www.farmdoc.uiuc.edu/farmincome/2007/pdfs/breakout(Uchtmann).pdf) (discussing drainage considerations and responsibility for infrastructure removal) (last visited July 8, 2008).

68. S.B. 1400, 95th Gen. Assem., Reg. Sess. (Ill. 2007). (Senator Jacobs introduced S.B. 1400 on February 9, 2007, and Senators Raoul, Rutherford, and Haine co-sponsored the bill.)

69. *Id.* § 30.

70. *Id.* Wind turbines already constructed, under construction or issued a building permit must also contribute to the fund. *Id.*

71. See Donald L. Uchtmann & A. Bryan Endres, *The Revised Illinois Grain Code: Greater Protection to Farmers and Lenders if a Grain Elevator Fails*, AGRIC. L. & TAX BRIEF No. 03–02 (Dec. 2003), available at http://www.farmdoc.uiuc.edu/legal/articles/ALTBs/ALTB_03–02/ALTB_03–02.pdf (describing amendments to the Illinois Grain Insurance Fund) (last visited July 8, 2008).

River.⁷² Senate Floor Amendment No. 3 to another bill, Senate Bill 1184, adopted on May 9, 2007, re-introduced the Wind Energy Indemnity Fund Law carved out of Senate Bill 1400.⁷³ Senate Bill 1184, however, died in the House.⁷⁴

Although the subject of much activity, the legislative session failed to resolve the issue of land restoration. As a result, landowners contemplating wind energy development projects should consider creative contract provisions to ensure the prompt removal of wind energy infrastructure upon decommissioning.⁷⁵

2. *Biofuels*

Although the biofuel industry is growing in Illinois, researching new conversion technologies is necessary for Illinois to remain a leader in the field. In order to advance the development of ethanol technology and strengthen the ethanol industry in Illinois, the legislature created the National Corn-to-Ethanol Research Center at Southern Illinois University at Edwardsville.⁷⁶ The purpose of the Center is to conduct research projects, provide training and services to the biofuel industry, and prepare students to work in the biofuels industry. The University of Illinois at Champaign-Urbana also established, in cooperation with the University of California, Berkeley and the Lawrence Berkeley National Laboratory, an Energy Biosciences Institute to investigate cellulosic ethanol technologies.⁷⁷

72. House Amendment No. 1, adopted in Executive Committee by voice vote on May 29, 2007, deleted all wind energy related provisions. House Amendment No. 2 added many of the wind energy property tax assessment provisions discussed above in reference to Pub. Act 95-644. House Amendment No. 4 replaced the entire contents of the bill with provisions relating to municipalities and annexation agreements. House Amendment No. 2 was tabled on August 6, 2007 while House Amendment No. 4 passed by voice vote on the same day. On August 8, 2007, the Senate concurred with House Amendment No. 4 to S.B. 1400. See Bill Status of S.B. 1400, Illinois General Assembly, available at <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1400&GAID=9&DocTypeID=S.&LegID=&SessionID=51&SpecSess=&Session=&GA=95> (last visited July 8, 2008).

73. S.B. 1184, 95th Gen. Assem. Reg. Sess. (Ill. 2007), Senate Floor Amendment No. 3, Article 10.

74. See Bill Status of S.B. 1184, Illinois General Assembly, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1184&GAID=9&DocTypeID=S.&LegId=29269&SessionID=51&GA=95> (last visited July 8, 2008).

75. Surety options could include indemnity bonds, lines of credit, insurance products or even county or township legislation to recover costs of land restoration.

76. See Pub. Act 95-99, codified at 110 ILL. COMP. STAT. 520/6.6(d)(6) (2007). (Representative Hoffman introduced H.B. 1313 on February 16, 2007, and five representatives co-signed the bill. Senator Haine sponsored the bill in the Senate, and nine senators co-signed the bill. Governor Blagojevich signed the bill into law as Pub. Act 95-0099 on August 13, 2007.)

77. See <http://energybiosciencesinstitute.org/> (describing research activities of the Energy Biosciences Institute) (last visited July 8, 2008).

With respect to biodiesel (a product derived from soybeans or other oil seeds), the legislature amended the Motor Fuel and Petroleum Standards Act⁷⁸ to require the labeling of gas pumps dispensing biodiesel or biodiesel blends.⁷⁹ Under the Act, as of July 1, 2008, any retail motor fuel dispensing device that dispenses a motor fuel containing biodiesel or a biodiesel blend must be labeled as such on the front of the dispenser.⁸⁰ Each device must be labeled with a capital letter “B” followed by the numerical value representing the volume percentage of biodiesel fuel, such as B10 for a ten percent biodiesel blend. The purpose of the statute is to assist consumers in making a proper fuel choice for their vehicle and establishing a standard that consumers can become accustomed with.

To further encourage biofuel production within Illinois, Representative Madigan introduced House Bill 2106,⁸¹ proposing substantial financial incentives for the production of ethanol fuels. The proposed law would provide facilities that produce ethanol for gasohol or majority blended ethanol fuel a grant equal to ten cents per gallon of annual production capacity, not to exceed \$10,000,000 for each facility. In addition, the statute would provide financial assistance to local governments and distribution centers for the installation of infrastructure for the use of majority blended ethanol and establish a program to facilitate the transportation of renewable fuels by rail.⁸² The proposal would also create a program to coordinate renewable fuel research and establish a Renewable Fuels Development Program Fund. House Bill 2106 passed the House on May 1, 2007, but as of this writing, remains in the Senate Rules Committee awaiting its third reading.⁸³

78. 815 ILL. COMP. STAT. 370/4 *et seq.* (2007).

79. Senator Sullivan introduced S.B. 649 on February 8, 2007. Senator Dahl co-sponsored the bill and Representative Tracey sponsored the bill in the House with four co-sponsors. The governor signed the bill into law as Pub. Act 95–381 on August 23, 2007.

80. 815 ILL. COMP. STAT. 370/4.1 (2007).

81. See H.B. 2106, 95th Gen. Assem. Reg. Sess. (Ill. 2007). Representative Madigan introduced H.B. 2106 on February 26, 2007. As of this writing there are twenty-two House co-sponsors. Senator Demuzio sponsored the bill in the Senate along with thirteen co-sponsors.

82. Although low-level ethanol blends (e.g., ten percent ethanol with gasoline) is compatible with standard storage tanks and gas pumps, E-85 (eighty-five percent ethanol with fifteen percent gasoline) requires special tanks and pumps to prevent corrosion. See U.S. Department of Energy, Alternative Fuels and Data Center, *Step-by-Step Process for Converting a Petroleum (Diesel or Gasoline) System to an E85 Compatible System*, available at http://www.eere.energy.gov/afdc/e85toolkit/converting_petroleum.html (last visited July 8, 2008).

83. See Bill Status of H.B. 2106, available at <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=2106&GAID=9&DocTypeID=H.B.&LegId=30953&SessionID=51&GA=95> (last visited July 8, 2008).

3. FutureGen

With significant coal resources and favorable geology, many believe East Central Illinois is a suitable place for a near zero emission coal gasification/carbon sequestration power plant. In order to induce the FutureGen Alliance⁸⁴ to build and operate the first plant of this type in Illinois, the General Assembly proposed significant legislation to provide the Alliance with liability protection, land use rights, and permitting certainty.⁸⁵ Public Act 95–18, the Clean Coal FutureGen for Illinois Act (FutureGen Act), was a significant inducement to the eventual selection of Mattoon, Illinois as the site for the FutureGen plant.⁸⁶

For liability purposes, the FutureGen Act transferred title to all future sequestered gas to the state of Illinois.⁸⁷ It also required the state to procure an insurance policy to cover the operators of the plant against any qualified loss stemming from a public liability action and indemnify the operator of the FutureGen site from liability from any public action that might be asserted against it.⁸⁸ The Act requires the Illinois Attorney General to represent the operators and defend them against any public liability action, unless the Attorney General has a conflict of interest, in which case the State will pay FutureGen's court costs and attorney's fees.⁸⁹ Moreover, the Act notes that the State will issue all necessary and appropriate permits and streamline the application process to insure timely issuance.⁹⁰ Finally, the Act provides FutureGen a tax exemption and establishes a financial assistance program for high-impact businesses.⁹¹

Although the FutureGen Act provided substantial financial and liability concessions to attract the plant, the hope is that the citizens of Illinois will be able to enjoy the benefits of having a clean coal power plant in Illinois—including the economic benefits of a \$1.5 billion plant and infrastructure investment with attendant construction and operating jobs.⁹² Whether all the funding envisioned for FutureGen actually materializes, and

84. See <http://www.futuregenalliance.org/> (describing FutureGen Alliance) (last visited July 8, 2008). "FutureGen is a public-private partnership to design, build, and operate the world's first coal-fueled, near-zero emissions power plant, at an estimated net project cost of US \$1.5 billion." *Id.*

85. See S.B. 1704, Ill. Gen. Assem. Reg. Sess. (2007).

86. See FutureGen Industrial Alliance, Inc., Final Selection Report, Dec. 18, 2007, available at http://www.futuregenalliance.org/news/fg_final_site_selection_report.pdf (last visited July 8, 2008).

87. 20 ILL. COMP. STAT. 1107/20 (2007).

88. *Id.* § 1107/25–1107/30.

89. *Id.* § 1107/35.

90. *Id.* § 1107/40.

91. *Id.* § 1107/43.

92. *Id.* § 1107/5.

the extent to which the ambitious project may be modified from the original plan, is unclear.⁹³

C. Locally Grown and Organic Food: Supporting Farms and Consumers

The market for locally grown and organic food in Illinois is expanding.⁹⁴ Ninety-five percent of organic food sold in Illinois, however, is grown and processed outside of the state, and only 0.2% of Illinois farm sales are agricultural products sold directly for human consumption.⁹⁵ Within the state, food dollars generally are not spent on Illinois agricultural products and the potential profits are being exported out of the state to the detriment of Illinois' farming communities.⁹⁶ With an average traveling distance of one thousand five hundred miles for food items consumed in Illinois, the dissonance between the growing demand for local and organic food and the products supplied by Illinois agriculture is ripe for resolution.⁹⁷

Serious concern regarding the distance food travels from farm to fork (or "Food Miles") is not unique to Illinois. Food miles have been the subject of intensive debate in sustainability circles for years,⁹⁸ with the most vigorous concerns raised in the United Kingdom (UK).⁹⁹ When asked whether they would prefer a locally grown conventional product or an imported organic product, a clear majority of UK consumers, despite their generally strong support for organic food, selected the local, conventional option.¹⁰⁰ The environmental, social, and economic burdens associated with transportation

93. For example, a January 30, 2008 story, available on News-Gazette.com, began as follows: "MATTOON—The proposed \$1.8 billion FutureGen clean coal power plant scheduled to be built in Mattoon may not be built after all, and politicians are claiming it's a victim of partisan politics." See http://www.news-gazette.com/news/local/2008/01/30/no_future_for_futuregen (last visited February 14, 2008).

94. Pub. Act 095-0145, § 5 (2007).

95. *Id.*

96. *Id.*

97. *Id.*

98. See A. Bryan Endres, *An Awkward Adolescence in the Organics Industry: Coming to Terms with Big Organics and Other Legal Challenges for the Industry's Next Ten Years*, 12 DRAKE J. OF AGRIC. L. 17, 29-31 (2007) (discussing the development of demand for locally sourced food).

99. See Department for Environment, Food and Rural Affairs (DEFRA), *The Validity of Food Miles as an Indicator of Sustainability Development: Final Report*, available at <http://statistics.defra.gov.uk/esg/reports/foodmiles/final.pdf> (July 2005) (hereinafter DEFRA Food Miles Study).

100. THE HANDBOOK OF ORGANIC AND FAIR TRADE FOOD MARKETING 47 (Simon Wright and Diane McCrea, eds. 2007) (citing Soil Association, Organic Market Report 2006).

of food, including carbon dioxide emissions,¹⁰¹ air pollution, congestion, accidents, and noise, underscore the potential for locally grown products.¹⁰²

Seeking to remedy the growing disparity between the supply and demand of locally grown and organic food, Representative Hamos introduced H.B. 1300 on February 15, 2007, with Senator Collins sponsoring the Senate version. After quick passage in the legislature, Governor Blagojevich signed Public Act 95–145 (Illinois Food, Farms, and Jobs Act) on August, 14, 2007.¹⁰³ The goal of the Illinois Food, Farms, and Jobs Act is to provide support for local food by capturing in Illinois the greatest portion of food production, processing, storing, and distribution possible.¹⁰⁴ To achieve that goal, the Act established the Illinois Local and Organic Food and Farm Task Force.¹⁰⁵ The Act requires the Task Force to develop policy and funding recommendations for expanding and supporting a state, local and organic food system.¹⁰⁶ The Task Force must submit its recommendations to the 2009 General Assembly by September 30, 2008. Potential recommendations could include land preservation and acquisition opportunities, training and development programs for conventional farmers and those planning on entering the industry, financial and technical support to help develop new food and agriculture related businesses, and expanded development of fresh food markets in underserved communities.¹⁰⁷

The Illinois Department of Agriculture will convene the Task Force composed of thirty-two members appointed for two-year terms by the Governor.¹⁰⁸ Members will include one representative each from the Departments of Agriculture, Commerce and Economic Opportunity, and

101. Air transport of food products, due to carbon dioxide emissions, has engendered the most criticism. For example, only one percent of food is air freighted in the UK, but it produces eleven percent of the carbon dioxide emissions attributed to food transportation. See DEFRA Food Miles Study, *supra* note 99, at ii.

102. DEFRA Food Miles Study, *supra* note 99, at i. On the other hand, avoiding products due to their “mileage” can have devastating impacts on farmers in the developing world. In Kenya, the livelihood of 150,000 organic farmers is at risk due to a proposed ban on air-freighted organic import to the UK. See TimesOnline, *Organic farmers face ruin as rich nations agonise over food miles*, The Times, Aug. 2, 2007. If organic certification is revoked, the market price of Kenyan produce would plummet forcing many farmers to abandon operations. See *id.*

103. H.B. 1300 had thirty-one co-sponsors in the House and forty-one co-sponsors in the Senate.

104. See Pub. Act 95–145 § 5 (2007).

105. *Id.* § 10.

106. *Id.* § 15.

107. Press Release, Illinois Dept. of Natural Resources, Gov. Blagojevich Signs Legislation to Expand the State’s Agricultural Programs, Further Protect Illinois’ Natural Resources (Aug. 14, 2007) (on file with author), available at <http://dnr.state.il.us/pubaffairs/2007/August/signs.html>; See also Pub. Act 095–0145 § 15.

108. Pub. Act 095–0145 § 10 (2007).

Human Services, as well as individuals from the agriculture, educational, and food retail sectors.¹⁰⁹

The hoped-for benefits of the Act are extensive. Developing a state-wide infrastructure to meet the demand for locally grown and organic food within Illinois may have economic, environmental, health, and security benefits. Capturing food dollars currently exported out of the state may benefit Illinois farmers and their communities, creating new jobs and business opportunities.¹¹⁰ Processing, storing, and distributing locally grown and organic foods may help to revitalize rural economies and provide entrepreneurial opportunities across the state.¹¹¹ Facilitating the sale of domestically produced food may reduce transportation costs and carbon dioxide from fuel emissions. Other environmental benefits hopefully will include water quality improvement from the reduced use of fertilizers and pesticides required for organic certification. Improved local food distribution systems may create new markets in low-income communities where currently there is insufficient access to fresh produce.¹¹² Increased availability of fresh fruits and vegetables could improve nutrition and potentially reduce obesity in these communities.¹¹³ Finally, the threat of bioterrorism has further elevated the importance of local food chains. Although the ability of organically produced food to supply all the required calories for a region is open to debate,¹¹⁴ the establishment of an infrastructure supporting locally-grown food, whether organic or conventional, hopefully will enhance food security.¹¹⁵

Similar government initiatives in other jurisdictions appear to have been successful. For example, the United Kingdom's Department for Environment, Food, and Rural Affairs (DEFRA), in 2002, launched an action plan to develop organic farming and food for England.¹¹⁶ At the time, only thirty percent of organic products were sourced in the UK.¹¹⁷ DEFRA established an aggressive goal for seventy percent domestic sourcing by 2010.¹¹⁸ 2005 estimates indicated that approximately sixty-six percent of all organic produce sold in

109. See Press Release, Illinois Dept. of Natural Resources, *supra* note 107. See also Pub. Act 095-0145 § 15.

110. Pub. Act 095-0145 § 5 (2007).

111. *Id.*

112. *Id.*

113. *Id.*

114. See Food and Agriculture Organization (FAO) of the United Nations, *Organic Agriculture and Food Security*, available at <ftp://ftp.fao.org/paia/organicag/ofs/OFS-2007-5.pdf> (last visited April 8, 2008).

115. See Endres, *supra* note 97, at 30.

116. DEFRA, *Farming: Policy and Research*, available at <http://www.defra.gov.uk/farm/organic/policy/index.htm>.

117. *Id.*

118. *Id.*

England was sourced domestically.¹¹⁹ Given Illinois' comparative advantages (soil, growing climate, transportation infrastructure, knowledgeable consumers, farmer ingenuity, and university investment in sustainable farming research), expectations are high that the Food, Farms, and Jobs Act will encourage a more self-sufficient and environmentally supportive food supply chain.

D. Horse Slaughter for Human Consumption: Legislation and Litigation

On May 24, 2007, Governor Blagojevich signed Public Act 95–2 (originating as H.B. 1711¹²⁰), which amended the Illinois Horse Meat Act.¹²¹ The Amendment prohibits the slaughter of horses in Illinois for human consumption.¹²² The last operating horse meat slaughter facility in the United States, Cavel International, Inc., was located in DeKalb, Illinois.¹²³ Specifically, the revised statute prohibits “any person to slaughter a horse if that person knows or should know that any of the horse meat will be used for human consumption.”¹²⁴ The revised statute also prohibits any person to possess, to import into or export from Illinois, “or to sell, buy, give away, hold, or accept any horse meat if that person knows or should know that the horse meat will be used for human consumption.”¹²⁵ A knowing violation of the Act constitutes a Class C misdemeanor, punishable by up to 30 days in jail and a \$1500 fine.¹²⁶

The arguments for banning horse slaughter included animal welfare concerns and the lack of a market in the United States for horse meat for human consumption. Representative Molero characterized the slaughter of horses for human consumption as a “shameless slaughter of . . . beautiful animals for the sole purpose of ensuring fine dining in European

119. *Id.*

120. Representative Molero introduced H.B. 1711 on February 22, 2007, and added seven co-sponsors over the next month. Senator Collerton was the chief Senate sponsor, along with five Senate co-sponsors. On May 23, 2007, the day before H.B. 1711 was signed into law, Senator Burzynski introduced S.B. 1844, which seeks to further amend the Horse Meat Act by making it unlawful for any person to sell horse meat for *animal* consumption unless the horse meat is clearly stamped, marked, and described as horse meat for animal consumption. As of this writing, S.B. 1844 is in the Senate Rules committee with no co-sponsors and is unlikely to pass.

121. 225 ILL. COMP. STAT. 635/1.5(a)-(c) (2007).

122. *Id.* § 625/1.5(a).

123. *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 551, 552 (7th Cir. 2007).

124. 225 ILL. COMP. STAT. 635/1.5(a) (2007).

125. *Id.* § 635/1.5(b).

126. *Id.* §635/1.5(c).

restaurants.”¹²⁷ American culinary habits generally regard the human consumption of horse meat as abhorrent or revolting, as evidenced by similar bans on horse slaughter for the purpose of human consumption in three other states.¹²⁸ Humanitarian concerns about the slaughter of horses for their meat stem from opposition to the perceived violent manner of death in slaughterhouses, as well as from emotional attachments that exist between horse lovers and horses. Reports of stolen horses being sold to Cavel worried local horse owners and, if true, were hurting business at a horse rehabilitation center near the Cavel plant.¹²⁹ Horse owners in the DeKalb area supported H.B. 1711 because the ban on horse slaughter eliminated the temptation to steal local horses and sell them to Cavel for a profit.¹³⁰ The Director of the Illinois Department of Agriculture, Charles Hartke, concluded that because no domestic horse meat market exists, there is no need for horses to be slaughtered for human consumption in Illinois.¹³¹ Precisely because of the lack of a domestic horse meat market, Cavel International exported its entire output to countries such as France, Belgium, and Japan, where horse meat is considered a delicacy.¹³² Illinois’ ban on horse slaughter for human consumption responded to public objection to this waning industry that serves only international markets.

Not surprisingly, Cavel International led the opposition to the Horse Meat Act as amended by H.B. 1711. Opponents of H.B. 1711 contested the offensiveness of human consumption of horse meat, asserting that it is improper for the state to legislate against wholesome food based on a passing fancy.¹³³ Until recently, horse meat was an accepted part of the American diet. In his Seventh Circuit opinion, Judge Posner recalled that the Harvard Faculty Club served horse meat steaks until the 1970’s.¹³⁴ Opponents of H.B. 1711 further contended that the use of a horse’s meat after its death is irrelevant to human treatment concerns and that disgust over human consumption of horse meat does not represent any genuine concern over the humane treatment of

127. Press Release, Office of the Governor, Gov. Blagojevich Signs Legislation Banning the Slaughter of Horses in Ill. for Human Consumption (May 24, 2007) (on file with author), *available at* <http://www.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=3&RecNum=5995>.

128. CAL. PENAL CODE § 598(c) (Deering 2007); MD. ANN. CODE art. 27 § 212 (2007); TEX. AGRIC. CODE ANN. §149.002-.003 (Vernon 2007).

129. Brief and Short Appendix of the Animal Welfare Institute as Amicus Curiae Supporting Defendants-Appellees and Affirmance of District Court at 4, *Cavel Int’l, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007) (No. 07–2658), 2007 WL 2426699.

130. *Id.*

131. *See* Press Release, Office of the Governor, *supra* note 126.

132. Brief and Required Short Appendix of Plaintiff-Appellants at 11; *Cavel Int’l, Inc.*, 500 F.3d 551.

133. Brief and Required Short Appendix of Plaintiff-Appellants at 13.

134. *Cavel Int’l, Inc.*, 500 F.3d at 552.

animals.¹³⁵ Moreover, H.B. 1711 was not narrowly tailored to achieve the humane treatment of animals, as it remains legal under the amended Horse Meat Act to slaughter countless horses for any reason other than the human consumption of their meat.¹³⁶ Opponents of H.B. 1711 also objected to the argument that the method of horse slaughter is inhumane. At the Cavel slaughterhouse, a USDA veterinarian and two or three additional inspectors were on site at all times to ensure Cavel's compliance with all federal laws and regulations, including those requiring humane methods of slaughter.¹³⁷

The American Veterinary Medical Association (AVMA) also opposed the effect of H.B. 1711. In light of the problem of unwanted horses in America, AVMA noted that the banning of horse slaughter in America could result in an increase in horses being transported out of the United States where there is no guarantee of humane slaughter.¹³⁸ The AVMA reported that in 2006, only 10,783 horses were transported from the United States to Mexico for slaughter.¹³⁹ In 2007, however, Mexico received 44,475 horses from the United States for slaughter.¹⁴⁰ Moreover, there is little or no regulatory oversight regarding the humane treatment of horses in Mexico.¹⁴¹ The AVMA also noted that unwanted horses sold for slaughter may now be neglected, abused, or abandoned by their owners.¹⁴² In sum, opponents contended that H.B. 1711 has no purpose other than shutting down Cavel's operation in DeKalb and that there is no legitimate state interest to close a viable business simply to satisfy the moral sensibilities of a vocal minority.¹⁴³ The shutdown of the Cavel plant resulted in the loss of over sixty jobs and \$20 million in annual revenue, hurting the local economy.¹⁴⁴

In response to the enactment of H.B. 1711, Cavel sought a preliminary injunction against the enforcement of the revised Act. Judge Kapala of the United States District Court for the Northern District of Illinois declined to issue the injunction, holding that Cavel had failed to make a "strong showing"

135. Brief Amici Curiae of the Horsemen's Council of Illinois and the Illinois Farm Bureau in Support of Reversal at 7; *Cavel Int'l, Inc.*, 500 F.3d 551.

136. Brief and Required Short Appendix of Plaintiff-Appellants, *supra* note 129, at 12.

137. *Id.* at 11.

138. Dr. Kimberly May, *Frequently asked questions about unwanted horses and the AVMA's policy on horse slaughter*, Jan. 24, 2008, available at http://www.avma.org/issues/animal_welfare/unwanted_horses_faqs.asp (last visited July 8, 2008).

139. *Id.*

140. R. Scott Nolen, *U.S. horse slaughter exports to Mexico increase 312%*, Dec. 20, 2007, <http://www.avma.org/onlnews/javma/jan08/x080115a.asp> (last visited July 8, 2008).

141. Brief Amici Curiae of the Horsemen's Council of Illinois and the Illinois Farm Bureau in Support of Reversal, *supra* note 99, at 7.

142. May, *supra* note 136.

143. Brief and Required Short Appendix of Plaintiff-Appellants, *supra* note 131, at 13.

144. Brief and Required Short Appendix of Plaintiff-Appellants, *supra* note 131, at 11.

that H.B. 1711 is unconstitutional.¹⁴⁵ On appeal to the United States Court of Appeals for the Seventh Circuit, Cavel argued the amendment violated the federal Meat Inspection Act¹⁴⁶ and the Commerce Clause of Article, I, Section 8 of the United States Constitution.¹⁴⁷ The Seventh Circuit (Judge Posner) affirmed the district court's decision to deny the preliminary injunction.¹⁴⁸ The Court found no merit to Cavel's claim that the amendment violates the Meat Inspection Act, noting that the federal statute does not preempt state laws banning certain types of meat production.¹⁴⁹ Furthermore, the Illinois statute did not violate the Commerce Clause because there is no discrimination in favor of local businesses.¹⁵⁰ The Court found the state's interference with foreign commerce to be minimal in relation to the legitimate state interest of prolonging the lives of animals the people of the state of Illinois happen to like.¹⁵¹

Cavel subsequently shut down its operation in DeKalb.¹⁵² On January 18, 2008, Cavel filed a Petition for Certiorari at the Supreme Court, which the Court subsequently denied.¹⁵³ In May, the Court denied a writ of certiorari from a Texas slaughterhouse seeking to challenge a similar Texas law banning the slaughtering of horses for human consumption.¹⁵⁴ Given the Court's decision in *Empacadora*, a successful petition is unlikely.

II. OTHER DEVELOPMENTS WITH AN IMPACT ON AGRICULTURAL LAW

Other developments related to agriculture, developments that do not fit into the broad themes of conservation, energy, and food appearing in Section I, are described below. The laws are grouped under the topics of Livestock

145. *Cavel Int'l Inc. v. Madigan*, No. 07C50100 (N.D. Ill 2007).

146. 21 U.S.C. § 601 *et seq.* (2000).

147. *Cavel Int'l Inc.*, 500 F.3d at 547.

148. *Id.* at 559.

149. *Id.* at 554.

150. *Id.* at 558.

151. *Id.* at 557.

152. Tim Landis, *Lost in the fog of rhetoric; Horse slaughter is a point of contention*, *The State Journal-Register*, December 16, 2007, at 39.

153. 76 USLW 3410 (Jan. 18, 2008) (No. 07-962).

154. *Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry*, 476 F.3d 326 (5th Cir. 2007), *cert. denied*, 127 S. Ct. 2443 (2007) (holding that the Federal Meat Inspection Act does not preempt Texas' prohibition on horse meat for human consumption and that the Texas statute did not violate the dormant Commerce Clause). The Texas Agricultural Code forbids the sale of horse meat for human consumption, the possession of horse meat with intent to sell it for human consumption, and the transfer of horse meat to an individual who intends to sell it for human consumption. TEX. AGRIC. CODE ANN. § 149.002-.003 (Vernon 2007).

and Animal Issues; Energy, Chemicals and Fertilizers; Transportation; and Other Developments.

A. Livestock and Animal Issues

1. *Livestock*

a. Livestock Facilities Management Act Amendment

The Livestock Facilities Management Act (LFMA),¹⁵⁵ enacted in 1996 to address environmental and land use problems arising from the expansion of concentrated animal production facilities, attempts to balance promotion of the livestock industry with protecting the character of the surrounding community and environment.¹⁵⁶ The LFMA establishes requirements for the siting,¹⁵⁷ construction, and operation of livestock management and livestock waste handling facilities.¹⁵⁸ The Act also outlines a process for public information meetings prior to the construction of a concentrated animal feeding operation.¹⁵⁹

Public Act 95–38¹⁶⁰ amends the LFMA by allowing the owner or operator of a livestock waste handling facility constructed with concrete and a design capacity of less than 300 animal units to demonstrate to the Illinois Department of Agriculture that a reduced storage volume, but not less than sixty days, is feasible due to the availability of land application areas that can receive manure at proper agronomic rates.¹⁶¹ The owner or operator may also propose another manure disposal method that would allow for a reduced manure storage design capacity.¹⁶² Under the Act, the Illinois Department of Agriculture must evaluate the proposal and determine whether a reduced manure storage design capacity is appropriate for the site.¹⁶³ This amendment

155. 510 ILL. COMP. STAT. 77/5 *et seq.* (2007).

156. *Nickels v. Burnett*, 343 Ill. App. 3d 654, 660, 798 N.E.2d 817, 823–4 (2d Dist. 2003) (discussing purpose of the Livestock Facilities Management Act). *See also* 510 ILL. COMP. STAT. 77/5 (2007) (listing legislative findings prompting statute).

157. 510 ILL. COMP. STAT. 77/35 (2007) (siting requirements).

158. *Id.* § 77/13 (design standards for non-earthen waste lagoons); *Id.* § 77/15 (design standards for waste lagoons).

159. *Id.* § 77/12 (Public Informational Meetings).

160. Pub. Act 95–38 originated from H.B. 215, which Representative Sacia introduced on January 8, 2007. Six representatives co-sponsored the bill in the House, and Senator Sieben sponsored the bill in the Senate, where there were six co-sponsors. The governor signed H.B. 215 into law on August 10, 2007.

161. 510 ILL. COMP. STAT. 77/13(a)(1)(B). A similar amendment applies to solid waste handling facilities. *See* 510 ILL. COMP. STAT. 77/13(a)(4).

162. *Id.* § 77/13(a)(1)(B).

163. *Id.*

provides flexibility to relatively small livestock operations (less than 300 animal units) with ample area for field application of animal waste.

b. Livestock Products and Food Safety

The Illinois Meat and Poultry Inspection Act, *inter alia*, establishes a state-licensing regime for meat and poultry slaughter and processing operations in Illinois.¹⁶⁴ Type II custom operations slaughter and process meat from private individuals for the individual's personal use and do not slaughter or process meat intended for sale to the public.¹⁶⁵ In order to increase food safety and prevent the outbreak and spread of disease originating from Type II operations, Public Act 95–554 establishes food safety and testing requirements for Type II licensees.¹⁶⁶ The Act requires all Type II licensees to “develop, implement, and maintain a written standard operating procedure for sanitation,” known as a Sanitation SOP.¹⁶⁷ The Illinois Department of Agriculture must review the adequacy and effectiveness of each licensee's Sanitation SOP to verify conformance with the Act.¹⁶⁸ In addition, Public Act 95–554 requires Type II licensees that slaughter livestock and/or poultry to test for E. coli.¹⁶⁹ “[Licensees] must collect at least one sample per week, starting the first full week of operation after June 1 of each year and continue sampling at a minimum of once each week in which the establishment operates until June 1 of the following year or until 13 samples have been collected, whichever is sooner.”¹⁷⁰

Public Act 95–554 also modifies the Illinois Diseased Animals Act by adding the term “contaminated” to the statute.¹⁷¹ The Act defines “contaminated” as “an animal that has come into contact with a chemical or radiological substance at a level [that] may be considered to be harmful to

164. See 225 ILL. COMP. STAT. 650/5.2(a) (2007).

165. *Id.* § 650/5.2(b).

166. Illinois Meat and Poultry Inspection Act, Pub. Act 95–554 originated from H.B. 1019, which Representative Reitz introduced on January 8, 2007. Representative Reis co-sponsored the bill, and Senator Sullivan sponsored the bill in the Senate with Senator Althoff as a co-sponsor. Governor Blagojevich approved the bill on August 30, 2007.

167. 225 ILL. COMP. STAT. 650/5.2(c) (2007).

168. *Id.* § 650/5.2(c)(10) (2007).

169. *Id.* § 650/5.2(d). Facilities slaughtering both livestock and poultry must only test the type of animal that it slaughters the most frequently, in terms of numbers for E. coli. *See id.*

170. 255 ILL. COMP. STAT. 650/5.2(d)(3) (2007).

171. 510 ILL. COMP. STAT. 50/1 (2007). Interestingly, Pub. Act 95–179 made identical changes to the Illinois Diseased Animals Act. Pub. Act 95–179 originated as S.B. 560, which Senator Sullivan introduced on February 8, 2007 with Senator Althoff as a co-sponsor. Representative Reitz sponsored the bill in the House, and Representatives Black, Phelps, Verschoore, and Sacia signed on as co-sponsors. The governor signed the bill into law on August 14, 2007.

humans or other animals if they come into contact with the contaminated animal or consume parts of the contaminated animal.”¹⁷² In essence, this amendment grants explicit authority to the Illinois Department of Agriculture to respond to a bioterrorism or other catastrophic animal-health related event involving chemical or radiological substances, rather than a contagious or infectious disease. Moreover, the revised Act authorizes the Department to issue area-wide quarantines to prevent the spread of contamination or disease.¹⁷³

c. Bovine Brucellosis Eradication

Bovine brucellosis is a highly contagious bacterial disease that causes late-term abortion and infertility in cattle. In order to curb the spread of the disease, the General Assembly, in 1959, established the Bovine Brucellosis Eradication Act, which contains a process for identifying and quarantining infected animals.¹⁷⁴ To increase certainty in diagnosis and to further the eradication of bovine brucellosis, Public Act 95–93 requires both “a positive reaction to an official test” for bovine brucellosis and a “review by a designated brucellosis epidemiologist” before being classified as an “infected animal” or a “reactor” under the Act.¹⁷⁵ A designated brucellosis epidemiologist is “an epidemiologist who has demonstrated the knowledge and ability to perform the functions required by the [USDA] and who has been selected as a designated brucellosis epidemiologist by the State Animal Health Official and the [USDA].”¹⁷⁶ Public Act 95–93 further amended the statute to limit movement of animals with a positive test result.¹⁷⁷ Animals testing positive at a livestock market may be slaughtered or returned to the herd of origin only by permit and must remain under quarantine for further evaluation.¹⁷⁸

172. 510 ILL. COMP. STAT. 50/1 (defining “contamination”).

173. 510 ILL. COMP. STAT. 5/30.

174. See 510 ILL. COMP. STAT. 30 *et seq.* (2007).

175. *Id.* § 30/1.5.

176. *Id.* § 30/1.16.

177. *Id.* § 30/5.1.

178. *Id.*

2. *Companion Animals*

a. Orders of Protection

Unfortunately, family pets often are the subject of controversy during domestic disputes or other criminal activities. In order to grant protection to animals and prevent emotional damage to owners, Public Act 95–234 expands the subject matter that judges may include in an order of protection.¹⁷⁹ Under Public Act 95–234, a court may use an order of protection to “[g]rant the petitioner the exclusive care, custody, or control of any animal owned, possessed, leased, kept, or held by the petitioner . . . respondent or a minor child residing in the residence . . . of either the petitioner or the respondent.”¹⁸⁰ A court may also “order the respondent to stay away from the animal and forbid the respondent from taking, transferring, encumbering, concealing, harming, or otherwise disposing of the animal.”¹⁸¹ Public Act 95–234 recognizes the importance of pets to individuals, especially in times of domestic crisis. Moreover, the expanded orders of protection could decrease animal cruelty.

b. Dangerous Dogs

In order to increase public safety, particularly child safety, as well as promote animal welfare, the legislature has enacted a series of rules relating to dangerous dogs.¹⁸² Public Act 95–0550 contains measures for protecting the public from potentially dangerous dogs and provides incentives for dog owners to restrain and control their dogs.¹⁸³ The Act defines a potentially dangerous dog as a dog that is unsupervised and found running at large with three or more other dogs.¹⁸⁴ Dogs engaged in legal hunting activities are not

179. See Pub. Act 95–234 originated as H.B. 9, which Representative Fritchey introduced on December 5, 2006 with seventeen House co-sponsors. Senator Haine sponsored the bill in the Senate, where there were four additional co-sponsors. On August 17, 2007, the governor signed the bill into law.

180. 725 ILL. COMP. STAT. 5/112A–14(b)(11.5) (2007) (Code of Criminal Procedure of 1963), 750 ILL. COMP. STAT. 60/214(b)(11.5) (2007) (Illinois Domestic Violence Act of 1986).

181. *Id.*

182. See Harold W. Hannah, *Tort Liability*, ILLINOIS LAW AND AGRIBUSINESS (Cottrell et al, ed. 2001) § 6.17 (discussing tort liability related to dogs); A. Bryan Endres, *Tort Liability* (Supplement) ILLINOIS LAW AND AGRIBUSINESS (Cottrell et al., eds, 2005) (same).

183. Pub. Act 95–550 originated as H.B. 822, which was introduced by Representative Mitchell on February 7, 2007. Representatives Mathias, Froehlich, Boland, and Bellock co-sponsored the bill. Senator Harmon sponsored the bill in the Senate, and Senators Holmes, Sieben, and Dillard co-sponsored the bill. The governor signed the bill into law on August 30, 2007.

184. 510 ILL. COMP. STAT. 5/2.17c (2007).

considered to be running at large if the dog is on land that is open to hunting or if the dog is on land on which the person has obtained permission to hunt.¹⁸⁵ Potentially dangerous dogs shall be spayed or neutered and microchipped within fourteen days of reclaim.¹⁸⁶ Failure to comply with the Act will result in impoundment of the dog and a \$500 fine.¹⁸⁷

B. Energy, Chemicals and Fertilizers

1. *Mine Subsidence Insurance*

In order to protect mining communities in southern Illinois, the Illinois Insurance Code requires insurers to make mine subsidence insurance coverage available for residences, living units and commercial buildings in Illinois.¹⁸⁸ The Illinois Mine Subsidence Insurance Fund serves as a reinsurance device for losses incurred by private insurers writing mine subsidence insurance policies pursuant to the Code.¹⁸⁹ Public Act 95–92 authorizes the Fund to reevaluate the amount of reinsurance available.¹⁹⁰ The Act requires the Fund to establish the maximum amount of reinsurance available per residence, living unit, and commercial building.¹⁹¹ The Act also allows the Fund to establish the reinsured loss per residence, commercial building and living unit for all policies issued or renewed on or after January 1, 2008.¹⁹² These revisions to the Insurance Code will allow the Fund to update its insurance policies to better reflect the current market for subsidence insurance.

2. *Oil and Gas Surface Damage*

In order to protect surface owners from damage to their property as a result of oil or gas exploration, encourage operators to conduct their drilling and producing operations with care and facilitate communication between landowner and operator, the General Assembly passed the Drilling Operations

185. *Id.* § 5/9.

186. *Id.* § 5/11.

187. *Id.*

188. 215 ILL. COMP. STAT. 5/801.1 (2007).

189. *Id.* § 5/803.1(b).

190. Pub. Act 95–92 originated as H.B. 1004, which Representative Mautino introduced on February 8, 2007. Seven representatives co-sponsored the bill. Senator Dahl sponsored the bill in the Senate, where five senators co-sponsored the bill. Governor Blagojevich signed the bill into law on August 13, 2007.

191. 215 ILL. COMP. STAT. 5/803.1(d)-(e).

192. *Id.* § 5/805.1(c).

Act in 1988.¹⁹³ Public Act 95–493 modifies the notification requirements of the Drilling Operations Act and expands operation liability for damage to surface lands.¹⁹⁴ Under the amended Act, the operator must give the surface owner a copy of the Drilling Operations Act along with a written notice of the operator’s intent to commence drilling operations.¹⁹⁵ Additionally, Public Act 95–493 expands a surface owner’s ability to recover reasonable compensation from the operator in the event of damage to the surface owner’s personal property during drilling, production or post-production.¹⁹⁶ A surface owner also is entitled to reasonable compensation from the operator for the loss in value of commercial crop land taken out of production for roads and drilling equipment.¹⁹⁷

3. *Ammonium Nitrate Purchaser Information*

Ammonium nitrate is a valuable fertilizer for farmers, but is an explosive agent used in bomb making. Because ammonium nitrate is readily available in bulk, farmers, as well as potential terrorists, have easy access to the product. In order to better monitor purchases of ammonium nitrate, the General Assembly passed House Bill 1741,¹⁹⁸ which requires fertilizer distributors selling fertilizer to a non-registrant provide the Director of Agriculture with a summary report of the tonnage sold to that person.¹⁹⁹ The Act further requires sellers of ammonium nitrate to obtain information about the date of distribution, the quantity purchased, the purchaser’s name, address, telephone number, and driver’s license number.²⁰⁰ Distributors must retain the records for two years and make them available for inspection.²⁰¹ A retailer of ammonium nitrate may also refuse to sell ammonium nitrate to any person attempting to purchase it in unusual quantities, under suspect patterns, or out

193. Pub. Act 85–1312, 85th Gen. Assem., Reg. Sess., 1988. The Drilling Operations Act applies only to surface owners who have not consented in writing to the drilling operations. *Id.*

194. On February 8, 2007, Senator Cullerton introduced S.B. 1041, the parent bill of Pub. Act 95–493. Senator Jones co-sponsored the bill, and Representative Phelps sponsored the bill in the House along with Representatives Bradley, Reitz, and Verschoore as co-sponsors. The governor signed the bill into law on August 28, 2007.

195. 765 ILL. COMP. STAT. 530/4(a) (2007).

196. *Id.* § 530/6(a)(1)-(2).

197. *Id.* § 530/6(a)(3).

198. Pub. Act 95–219 originated as H.B. 1741, introduced on February 22, 2007 by Representative Eddy. Nine representatives co-sponsored the bill, an Senator Righter sponsored the bill in the Senate. The governor signed the bill into law on August 16, 2007.

199. 505 ILL. COMP. STAT. 80/12(a) (2007).

200. *Id.* § 80/12(b).

201. *Id.* § 80/12(c).

of season.²⁰² In sum, Public Act 95–0219 will continue to grant farmers necessary access to ammonium nitrate while providing law enforcement tools to track potentially dangerous purchases.

4. *Research Grants for the Development of Inert Anhydrous Ammonia*

Although primarily used as a fertilizer, anhydrous ammonia also is an important ingredient for the production of methamphetamine. In order to curtail the use of anhydrous ammonia for methamphetamine production, the General Assembly passed Senate Bill 1665, amending the Technology Advancement and Development Act (TADA).²⁰³ The Act authorizes grant money, allocated under the TADA, to research and test products that render anhydrous ammonia inert in the production of methamphetamine.²⁰⁴ Modifying anhydrous ammonia to prevent conversion into methamphetamine will allow farmers to continue using the valuable input without fear of theft and dangerous chemical releases related to production and use of methamphetamine. Moreover, this may lead to a decrease in the availability of the dangerous drug.

C. Transportation

1. *ATVs on the Road*

ATVs are a popular form of outdoor recreation, as well as a mode of transportation across rural land. Until recently, operating an ATV on a public roadway was illegal, inconveniencing rural landowners who used ATVs for work purposes. Public Act 95–575 makes an exception for farmers.²⁰⁵ The Act amended the Illinois Vehicle Code to allow a person to operate an ATV on a country or township roadway for the purpose of conducting farming operations and when traveling to and from the home, farm, farm buildings, and any nearby or adjacent farm.²⁰⁶ ATVs operating on a country or township roadway at any time between one-half hour before sunset and one-half hour after sunrise must be equipped with lighted head lamps and tail lamps.²⁰⁷

202. *Id.* § 80/12(b).

203. *See* Pub. Act 95–433, codified at 20 ILL. COMP. STAT. 700/1001 *et seq.* (2007).

204. *Id.* § 700/2002(a).

205. Representative Brauer introduced H.B. 1499, the parent bill of Pub. Act 95–575, on February 21, 2007. Senator Bomke was the chief Senate sponsor. Governor Blagojevich signed the bill into law on August 31, 2007.

206. 625 ILL. COMP. STAT. 5/11–1426(a-1) (2007).

207. *Id.*

2. *Child Seat Belts in Trucks*

In order to protect children and encourage public safety, the General Assembly passed Senate Bill 71, amending the Child Passenger Protection Act.²⁰⁸ The amendment requires persons transporting a child less than eight years old in a truck or truck tractor equipped with seat safety belts to properly secure the child in an appropriate child restraint system.²⁰⁹ In addition, the amendment removed the liability protection previously afforded to individuals transporting other's children when the child's parent or legal guardian did not provide a child restraint system. In sum, the amendments provided by Public Act 95-254 eliminated any exceptions to child restraint devices when transporting children less than eight years old.

D. Other Interesting Developments

1. *Agriculture in the Classroom*

In order to facilitate quality agriculture education in Illinois, the General Assembly created the Agriculture in the Classroom Fund.²¹⁰ To raise money for the Fund, the General assembly authorized an Agriculture in the Classroom license plate program.²¹¹ For each plate issued under the program, the Fund will receive \$25, as well as \$25 for each registration renewal period.²¹² The Illinois Agricultural Association Foundation, a charitable non-profit organization, will use the money from the Fund to provide grants in support of Agriculture in the Classroom programming for public and private schools in Illinois.²¹³

208. Pub. Act 95-254 originated as S.B. 71, which Senator Cullerton introduced on January 31, 2007. Senators Silverstein, Collins, and Demuzio co-sponsored the bill. Representative D'Amico sponsored the bill in the House, and Representatives Crespo, Lyons, Joyce, and Kosel co-sponsored the bill. The governor signed the bill into law on August 17, 2007.

209. 625 ILL. COMP. STAT. 25/4 (2007).

210. On February 8, 2007, Representative Myers introduced H.B. 1024, the parent bill of Pub. Act 95-94. Six representatives co-sponsored the bill, and Senator Sullivan sponsored the bill in the Senate, where there were three more co-sponsors. On August 13, 2007, Governor Blagojevich signed the bill into law, codified at 30 ILL. COMP. STAT. 105/5.675 (2007). For additional implementation information, see Illinois Agricultural Association, *Get Your Ag License Plate*, Sept. 6, 2007, available at <http://www.ilfb.org/viewdocument.asp?did=13961&PrinterFriendly=true>.

211. 625 ILL. COMP. STAT. 5/3-664(a) (2007).

212. *Id.* § 5/3-664(c).

213. *Id.* § 5/3-664(d).

2. *Annexation Agreements*

In order to facilitate the growth of rural communities and resolve disputes between county boards and municipalities relating to annexation agreements, the General Assembly enacted H.B. 3597, amending the Counties Code.²¹⁴ As amended, the Counties Code authorizes boards of certain counties to retain jurisdiction over land that is the subject of a municipal annexation agreement if the land is located more than one and a half miles from the corporate boundaries of the municipality.²¹⁵ Specifically, the Act provides that property located in Boone, DeKalb, Grundy, Kankakee, Kendall, LaSalle, Ogle or Winnebago County that is the subject of an annexation agreement, and located within one and a half miles of the corporate boundaries of a municipality, is subject to ordinances, control and jurisdiction of the annexing municipality.²¹⁶ On the other hand, if the property is located more than 1.5 miles from the corporate boundary, the county may retain jurisdiction by a vote of two-thirds of its members.²¹⁷ The amended Code further provides that if the county board originally retains jurisdiction, the annexing municipality may file a request for transfer of jurisdiction with the county board, subject to the county board's majority vote.²¹⁸

3. *Pest Control and the Emerald Ash Borer*

In order to prevent the introduction of invasive species, including the Emerald Ash Borer, the General Assembly amended the Insect Pest and Plant Disease Act.²¹⁹ One vector of invasive species is through transported goods, such as firewood. Accordingly, the amended Act requires the Department of Agriculture, in collaboration with Department of Natural Resources, to promulgate rules concerning the control of firewood importation with special attention to controlling the infestation of insect pests.²²⁰

214. Representative Pritchard introduced H.B. 3597, the parent bill of Pub. Act 95-175, on February 27, 2007, and Representative Wait co-sponsored the bill. Senator Burzynski sponsored the bill in the Senate with Senator Althoff as a co-sponsor. The governor signed the bill into law on August 14, 2007.

215. 55 ILL. COMP. STAT. 5/5-1129 (2007).

216. 65 ILL. COMP. STAT. 5/11-15.1-2.1(c) (2007).

217. *Id.*

218. *Id.* § 5/11-15.1-2.1(d).

219. Senator Dillard introduced S.B. 550, the parent bill of Pub. Act 95-309, on February 8, 2007, and Senators Millner, Kotowski, and Althoff co-sponsored the bill. Representative Mathias sponsored the bill in the House, with Representative Pihos as a co-sponsor. The governor signed the bill into law on August 20, 2007, codified at 505 ILL. COMP. STAT. 90/35 (2007).

220. 505 ILL. COMP. STAT. 90/35 (2007).

In order to protect further Illinois' native ash trees from the blight of the emerald ash borer, the General Assembly established the Emerald Ash Borer Revolving Loan Program.²²¹ The Program will provide low- or zero-interest loans to units of local government for the replanting of trees on public lands that are within the Emerald Ash Borer quarantine area.²²² The loan amount may not exceed \$5,000,000 to any one unit of local government and any loan may not exceed the moneys that the unit of local government dedicates for the reforestation project for which the loan is made.²²³ In addition, the Department of Agriculture may enter into agreements with a unit of local government to assist the Department in carrying out its duties in a quarantined area, including the transportation, processing and disposal of diseased material.²²⁴

III. SOME UNFINISHED BUSINESS—REPAIRING THE ILLINOIS RECREATIONAL USE ACT

Under the 2005 amendments to the Illinois Recreational Use of Land and Water Areas Act (“Illinois Recreational Use Act”), effective August 18, 2005, landowners who selectively allow others on their lands at no charge to hunt or engage in recreational shooting receive protection from negligence-based premises liability.²²⁵ However, landowners still remain potentially liable for negligence-based premises liability if the injured entrant was on the

221. Senator Schoenberg introduced S.B. 1617, the parent bill of Pub. Act 95–588, on February 9, 2007. Six Senators co-sponsored the bill. Representative Coulson sponsored the bill in the House, along with eight co-sponsors. Governor Blagojevich signed the bill into law on September 4, 2007.

222. 20 ILL. COMP. STAT. 3501/825–90(a) (2007).

223. *Id.* § 3501/825–90(c)–(d).

224. *Id.* § 3501/825–90(e). Under these agreements, the Department can provide compensation or financial assistance to the unit of local government for its costs. *Id.*

225. 745 ILL. COMP. STAT. 65/1–65/7 (2006). The act was amended by Pub. Act 94–625, effective August 18, 2005, to (a) clarify that landowners may limit access to their property to only selected individuals while maintaining immunity protection under the Act., (b) exclude residential buildings from liability protection by changing the definition of “land” to exclude residential buildings, and (c) narrow the definition of “Recreational or Conservation Purpose” to include *only* “hunting or recreational shooting” as recreational activities that would provide landowners’ immunity. *See generally* A. Bryan Endres and Donald L. Uchtmann, *Survey of Illinois Law: The Latest Twist on the Illinois Recreational Use of Land and Water Areas Act: Clamping down on Landowner Immunities*, 29 S. ILL. U. L. J. 579 (2005). The authors observe that landowners may enjoy immunity from negligence-based premises liability under other laws, e.g., laws limiting liability for injury while using snowmobiles (625 ILL. COMP. STAT. 40/5–1) or ATVs (625 ILL. COMP. STAT. 5/11–1427(g)). Such other laws, however, are beyond the scope of this discussion.

landowner's property to fish or hike or engage in most other recreational activities.²²⁶

In an earlier article, the authors invited the Illinois General Assembly to expand, not limit, the range of activities meeting the Recreational Use Act's definition of "Recreational or Conservation Purpose" and thereby encourage more landowners to make their private lands available to members of the public for recreational purposes at no charge.²²⁷ More to the point, the authors suggested that the preferred approach would be to re-instate a *general* definition for "Recreational or Conservation Purpose" rather than adopting a "listing" approach. The authors reasoned that this preferred approach would avoid "the difficult and never-ending challenge of legislatively developing a list of specific activities that constitute recreational and conservation use worthy of the Act's support."²²⁸

In adopting S.B. 333, codified as Public Act 95-63, the General Assembly seemed to follow the author's suggested approach, albeit in a different but parallel context.²²⁹ In this new Act, applicable only to landowners who lease land to the Illinois Department of Natural Resources, "Recreational use" is defined to mean "any activity undertaken for conservation, resource management, exercise, or recreation on leased land"—the broad definition approach the authors believe should be adopted for "Recreational or Conservation Purpose" in the Recreational Use Act. Regrettably, the legislature has yet to re-instate a "broad definition" approach in the Recreational Use Act. This leaves the "listing approach" in use by default—and with a very limited list, hunting and recreational shooting, that is hard to defend from a public policy standpoint.

The authors acknowledge that hunting is one very popular recreational activity on open space land,²³⁰ but the authors believe that other recreational

226. 745 ILL. COMP. STAT. 65/1-65/7 (2006). Also, the authors observe that if landowners previously opened their lands to the *general public* for non-hunting and non-shooting recreational activity, thereby bringing themselves within the protection of the act as interpreted by the Illinois Supreme Court in *Hall v. Henn*, 208 Ill. 2d 325, 802 N.E.2d 797 (Ill. 2003), the liability risk of these landowners actually increased because of the 2005 amendments. See Endres & Uchtmann, *supra* note 223, at 601.

227. Endres & Uchtmann, *supra* note 223, at 599.

228. Endres & Uchtmann, *supra* note 223, at 603.

229. See State of Illinois Recreational Use of Leased Land Act, 745 ILL. COMP. STAT. 67/1, enacted by Pub. Act 95-0603, effective September 11, 2007.

230. Interestingly, many bills were introduced that relate to hunting in one way or another. Here is a partial list of bills that became law during this legislative session:

- H.B. 320—Deer Hunting Time. H.B. 320, codified as Pub. Act 95-289, amends the Wildlife Code by extending the daily period for deer hunting to one half hour after sunset.
- S.B. 201, codified as Pub. Act 95-0013, amends the Wildlife Code by creating a special two-day youth-only deer hunting season between September 1 and October 31 and prohibits loaning or

activities requiring access to open space (e.g., hiking, fishing, bird watching, etc.) are equally valuable to Illinois citizens and worthy of similar support. The authors continue to urge the Illinois General Assembly to substitute a broad definition for “recreational or conservation purpose” for the current list of hunting and recreational shooting as the preferred way to further encourage landowners to make private lands available to the public, at no charge, for recreational purposes.²³¹

In the meantime, efforts continue at least to expand the list. For example, on January 9, 2008, Representative William B. Black introduced H.B. 4296 into the 95th General Assembly. H.B. 4296 enlarges the definition of “recreational or conservation purpose” to include “hunting, or recreational shooting, hiking, operation of an off-highway vehicle, rock climbing, trapping, horseback riding of the entrant's own horse or horses, fishing, swimming, boating, camping, picnicking, water or snow skiing, sledding, snowmobiling, an activity with an educational or conservation purpose, or a combination thereof”²³² The authors are encouraged by the continued efforts of many legislators and policy advocates to amend the Recreational Use Act and hope the General Assembly will resolve the issue in its next legislative session.

IV. CONCLUDING THOUGHTS

National agriculture-related issues, such as a new farm bill²³³ (with its potential impact on traditional farm commodity programs) and passage of the

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- transferring to another person any license, permit, or tag issued under the Wildlife Code.
 - S.B. 216—Crossbow Hunting. S.B. 216, codified as Pub. Act 95–329, amends the Wildlife Code by permitting a person age sixty-two or older to use a crossbow to take deer without a permit.
 - S.B. 498—Hunting Habitat Management. S.B. 498, codified as Pub. Act 95–118, amends the Illinois Hunting Heritage Protection Act to provide that Department of Natural Resources land management decisions and actions may not, to the greatest practical extent, result in any net loss of habitat available for hunting opportunities on Department-managed lands.
 - H.B. 201—Remote Weapon Operation Ban. H.B. 201, codified as Pub. Act 95–283, amends the Wildlife Code by prohibiting computer-assisted remote hunting.
231. Based on the 2007 work of colleagues within the Illinois State Bar Association’s Agricultural Law Section and Civil Practice Section, the authors recommend the following definition of “recreational and conservation purpose” for consideration: “Conservation, resource management, exercise, education and outdoor sports, as well as the practice, instruction or viewing of said activities.”
232. On January 19, 2007, Representative Black attempted to re-instate the broad definition approach by introducing H.B. 29. H.B. 29 would have amended the Illinois Recreational Use Act by defining “recreational and conservation purpose” to be “any activity undertaken for conservation, resource management, exercise, education, relaxation, or pleasure on land owned by another.” Several amendments altered the proposed legislation which was referred to the Rules Committee on December 3, 2007.
233. Food, Conservation and Energy Act of 2008, Pub. Law No. 110–246.

Water Resources Development Act of 2007²³⁴ (with its potential for rebuilding locks on Illinois waterways), have been prominent among the agricultural issues of 2007. Nevertheless, legislation adopted by the Illinois General Assembly during 2007 is also important. This article has described much of that legislation.

In Section I the authors discussed new Illinois legislation under three broad themes: Conservation, Energy, and Food. In Section II the authors noted other Illinois legislative developments related to agriculture—legislation touching on a wide range of topics. In Section III, the authors reported on unsuccessful 2007 legislative efforts to amend the Illinois Recreation Use Act.²³⁵

Of course, the inability of the General Assembly to fix the Recreational Use Act was not the only item of unfinished business in 2007. For example, the inability (as of this writing) of the General Assembly to pass a capital budget that would address road, bridge and other infrastructure needs in rural Illinois or to substantially address school funding issues²³⁶ remains elusive and of significant concern to many.

In closing, the authors note the breadth of agricultural law in this state and acknowledge that this survey of new Illinois legislation has undoubtedly omitted some developments that others would have included. Such omissions are inevitable given the potential scope and importance of agriculture to Illinois.

234. See Pub. Law No. 110–114, 121 Stat. 1041 (2007).

235. Illinois Recreational Use of Land and Water Areas Act, 745 ILL. COMP. STAT. 65/1 *et seq.* (2006).

236. The General Assembly did pass S.B. 835, sponsored by Senator Jacobs and Representative Verschoore, which was signed into law on October 17, 2007, as Pub. Act 95–675. This bill provides for the potential funding of schools with a county sales tax of up to a one percent. Food and drug sales are exempt from the tax as are all existing agricultural sales tax exemptions. Tax proceeds can be used for new construction or remodeling of school facilities. However, the General Assembly was again unable to make progress on comprehensive school funding reform.