

West Virginia Department of Agriculture

Kent A. Leonhardt, Commissioner
Joseph L. Hatton, Deputy Commissioner



July 27, 2018

Thank you for commenting on the West Virginia Department of Agriculture's legislative rule Title 61CSR37 Agritourism. After further review and consideration of the comments received, the West Virginia Department of Agriculture has modified the rule in the following areas of concern:

§61-37-2. Definitions.

This section has been changed to reflect the following:

2.1. "Agritourism" means any lawful activity carried out on a farm or ranch that allows members of the general public for recreational, entertainment, or educational purposes to view or enjoy rural activities. Agritourism specifically includes weddings and receptions held on farms or ranches, or activities that take place on a forest farm.

§61-37-5. Maintenance of property status for certain purposes; exceptions.

This section has been changed to reflect the following:

5.1.b. Tangible personal property utilized in agritourism shall be considered to be "employed exclusively in agriculture," and therefore eligible for the personal property exemption contained in W. Va. Code § 11-3-9(a)(28), so long as that tangible personal property would otherwise be eligible for the exemption, save the property's use in agritourism activities, and the tangible personal property's use in agritourism activities less than 50% of its overall use.

mailing address: 1900 Kanawha Blvd. East, Charleston, WV 25305-0170

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West Virginia Department of Agriculture

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5.2. An agritourism business may use certain of its facilities for occasional events without complying with building codes applicable to structure used for such purposes on a full-time basis so long as such facilities are deemed structurally sound and otherwise safe for the intended use. Such determinations concerning structural soundness and safety will continue to determine by the State Fire Marshall and/or city and county building officials.

Sincerely,

A handwritten signature in cursive script that reads "Kent A. Leonhardt".

Kent A. Leonhardt
Commissioner

mailing address: 1900 Kanawha Blvd. East, Charleston, WV 25305-0170

physical address: 217 Gus R. Douglass Lane, Charleston, WV 25312

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Martin, Jodee

From: Paul Raco <pjraco.consulting@gmail.com>
Sent: Tuesday, July 24, 2018 4:09 PM
To: Martin, Jodee; Bowden, Cassey
Cc: Patricia Rucker; Eric Lewis
Subject: James Gibson Testimony on Proposed Rule for SB446
Attachments: Gibson SB446 Rule Testimony Signed.pdf

Dear Ms. Bowden.

Attached, please find the testimony of James Gibson on the proposed Legislative Rules for SB446 that was introduced by Senator Rucker and approved by the Legislature this year. Mr. Gibson is a long time owner of a farm in Jefferson County.

If you have any questions, please give Jim (James) a call at the phone number listed in his letter. You may also contact me by email or phone if you have any questions. Several farmers and business owners, including me, worked very closely with Senator Rucker on this legislation.

Congratulations on your new appointment and thank you for an opportunity to comment on the proposed Rules.

Sincerely, Paul

—
Paul J. Raco
P. J. Raco Consulting, LLC
PO Box 548
Charles Town, WV 25414
304/676-8256

Martin, Jodee

From: PJ <pjraco.consulting@gmail.com>
Sent: Thursday, July 26, 2018 9:51 AM
To: Bowden, Cassey
Subject: Re: James Gibson Testimony on Proposed Rule for SB446

You are most welcome, Cassey.

Please feel free to contact me at any time on anything related to Jefferson County or Planning and Zoning matters. I was the long time Executive Director of Planning, Zoning, Engineering and Building Codes in Jefferson County (between 1986 and 2007) when most regulations were written, such as Zoning in 1988 and Building Codes in 2001 in our County. I am now a consultant on these matters.

That is why I wanted to point out to you that existing section in the State Code (7-1-3N) regarding building codes and structures on Agricultural Properties. I thought that you may find it helpful in case you already weren't aware of it.

Thanks again, and have a great weekend.

Paul

Sent from my iPad

On Jul 24, 2018, at 10:08 PM, Bowden, Cassey <cbowden@wvda.us> wrote:

Paul,

Thank you for reaching out and providing comment. Mr. James Gibson's comments on SB446 have been received.

Many thanks,

<image001.png> **Cassey C. Bowden, Director**
West Virginia Department of Agriculture
Business Development Division
Office: 304-558-2210
<image002.png> cbowden@wvda.us agriculture.wv.gov

From: Paul Raco <pjraco.consulting@gmail.com>
Date: Tuesday, July 24, 2018 at 4:10 PM
To: "Martin, Jodee" <jodeemartin@wvda.us>, Cassey Bowden <cbowden@wvda.us>
Cc: Patricia Rucker <Patricia.Rucker@wvsenate.gov>, Eric Lewis <ellewis@oil-cogas.com>
Subject: James Gibson Testimony on Proposed Rule for SB446

Dear Ms. Bowden.

Attached, please find the testimony of James Gibson on the proposed Legislative Rules for SB446 that was introduced by Senator Rucker and approved by the Legislature this year. Mr. Gibson is a long time owner of a farm in Jefferson County.

If you have any questions, please give Jim (James) a call at the phone number listed in his letter. You may also contact me by email or phone if you have any questions. Several farmers and business owners, including me, worked very closely with Senator Rucker on this legislation.

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Sincerely, Paul

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Paul J. Raco
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WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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6/27/2018 10:34:48 AM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Agriculture

TITLE-SERIES: 61-37

RULE TYPE: Legislative

Amendment to Existing Rule: No

Repeal of existing rule: No

RULE NAME: Agritourism

CITE STATUTORY AUTHORITY: §19-36-1

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/27/2018 11:00 AM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Cassey Bowden

ADDRESS: WV Dept of Agriculture

1900 Kanawha Boulevard, East

EMAIL: jodeemartin@wvda.us

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

*See ATTACHED
public
comment
on
Proposed Rule.*

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Rule Detail And Documents

Rule					
Agency	Title-Series	Files	Name	Type	Authority
Agriculture	61-37		Agritourism	Legislative in Progress	§19-36-1

Documents

Date Filed	Status	Other Dates	Description	Files
6/27/2018			Notice	PDF Word
Date Filed	Status	Other Dates	Description	Files

Link To Rule

<http://apps.sos.wv.gov/adlaw/csr/ruleview.aspx?document=>

Link To Agency

<http://apps.sos.wv.gov/adlaw/csr/rule.aspx?agency=Agricuit>

Wednesday, July 11, 2018 — 9:57 PM

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Dr. James G. Gibson
201 Needwood Farm Lane
Harpers Ferry, WV 25425

July 20, 2018

Mr. Cassey Bowden, Director
WV Department of Agriculture
Agribusiness Development Division
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Director Bowden,

Please accept these comments on the proposed Rules to institute SB446 that was adopted in the 2018 Legislative Session. Attached, please find a detailed explanation of the requested change to section 5.2 of the proposed Rules on Agritourism. Jefferson County is one of the few places in West Virginia that has Countywide Zoning and Building Codes, so it is vital that the Rules are clear so that farmers, such as myself, who want to develop a well thought out Agritourism Operation on their farms don't run into unnecessary impediments.

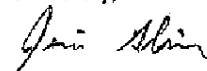
We were quite active with Senator Rucker's efforts to get this Bill adopted and I hope that the Rules become a mechanism to successfully allow the full development and potential of Agritourism in Jefferson County. I won't repeat what is found in the attachment, but it is important to clarify Section 5.2 so that it does not contradict WV State Code 7-1-3N which already allows the complete exemption for structures from building codes on agricultural premises. It is very easy to monitor this exemption since the Farm Use forms must be filed with, and verified by, the Assessor of each County every year.

Simply put, we believe that WV State Code 7-1-3N is clear and we hope that section 5.2 of the proposed Rules incorporates that same exemption into the Rules. Please find the highlighted WV State Code 7-1-3N in the attachment, along with a small revision proposed to clarify 5.2 in the Rules. We personally don't have a problem getting a private engineer's certification that a structure that will be used for agritourism full time is structurally sound. Furthermore, we believe that the Fire Marshall already should approve these full-time structures for public gatherings, so that there is a safe procedure in place for egress during an emergency.

I believe that the attached recommended minor change to the proposed Rules helps to clarify what applies to full-time versus part-time structures used for Agritourism without affecting the already existing Building Code exemption found in WV State Code 7-1-3N. Otherwise, the proposed Rules appear to meet the intent of Senator Rucker and the Legislature when they proposed and passed SB446.

If you have any questions, please feel free to contact me at 304/279-2688. Thank you.

Sincerely,



Jim Gibson
304/279-2688

Public Testimony
SB 446
Proposed Legislative Rules
Particularly 61-37-5 (5.2)
Agriculture Properties
July 15, 2018

SB 446 States:

§19-36-5. Maintenance of property status for certain purposes; exceptions.

(a) Notwithstanding any provision of this code to the contrary, the occurrence of agritourism does not change the nature or use of property that otherwise qualifies as agricultural for building code and property tax classification purposes.

(b) An agritourism business may use certain of its facilities for occasional events without complying with building codes applicable to structures used for such purposes on a full-time basis as long as such facilities are deemed structurally sound and otherwise safe for the intended use.

Rule as Proposed by Department:

61-37-5

5.2 An agritourism business may use certain of its facilities for occasional events without complying with building codes applicable to structure used for such purposes on a full-time basis so long as such facilities are deemed structurally sound and otherwise safe for the intended use.

This section of the Rule needs to be rewritten and clarified because the Bill (5b) was intended to be read as two sections (one for occasional use and one for full time use). The proposed 5.2 rule needs to be clarified as follows:

Here is a proposed alternative that makes sense:

5.2 An agritourism business may use certain of its facilities for occasional events without complying with building codes applicable to structure used for such purposes on a full-time basis as long as such facilities are deemed structurally sound and otherwise safe for the intended use.

As you can see, this sentence structure makes sense of the provision as written. As Senator Rucker is aware, it was always the intent to continue to exempt all structures on farms from Building Codes as found in 7-1-3N of the Code (see pertinent section that follows). It was the intent of 5a and 5b of SB 446 to make sure that this already existing exemption was carried through for Agritourism on a farm or ranch. While both occasional and full time uses were to continue to be exempt as found in 7-1-3N, 'Occasional Use' Agritourism was going to have no restrictions, and 'Full-Time' use would need to demonstrate that the facilities were 'structurally sound' (by certification of a Professional Engineer) and 'otherwise safe' (by Fire Marshall approval).

Accordingly, please rewrite proposed Rule 37-5.2 as found highlighted above. This will make the Rules (and SB446) more consistent with WV Code 7-1-3N which already states:

§7-1-3n. Authority of certain counties as to building and housing codes; state building code.

(a) In addition to all other powers and duties now conferred by law upon county commissions, county commissions are hereby authorized and empowered, by order duly entered of record, to adopt building and housing codes establishing and regulating minimum building and housing standards for the purpose of improving the health, safety and well-being of its citizens. Such codes may be adopted either for the entire county, or for any portion or portions of such county which may constitute an effective area or areas for such purposes, without the necessity of adopting such codes for any other portion of such county. Notwithstanding any other provision of this subsection to the contrary, no order shall be made to or affect any territory within the boundaries of any municipal corporation which has adopted and in effect a housing and building code, unless and until such municipal corporation so provides by ordinance, and no order shall be made to or affect any territory within the boundaries of any municipal corporation which has adopted and in effect a housing and building code, unless and until such municipal corporation so provides by ordinance.

The pertinent section is highlighted in red. The Rules for SB446 should not contradict this section under Enabling Legislation for Building Codes that clearly state that structures on a property that is used for agricultural purposes are exempt from Building Codes. This is quite easy to track since Farm Use Forms must be submitted and approved by the County Assessor each year.

§7-1-3n. Authority of certain counties as to building and housing codes; state building code.

(a) In addition to all other powers and duties now conferred by law upon county commissions, county commissions are hereby authorized and empowered, by order duly entered of record, to adopt building and housing codes establishing and regulating minimum building and housing standards for the purpose of improving the health, safety and well-being of its citizens. Such codes may be adopted either for the entire county, or for any portion or portions of such county which may constitute an effective area or areas for such purposes, without the necessity of adopting such codes for any other portion of such county. Notwithstanding any other provision of this subsection to the contrary, no such code shall apply to or affect any territory within the boundaries of any municipal corporation which has adopted and in effect a housing and building code, unless and until such municipal corporation so provides by ordinance, or to structures on parcels of land used primarily for agricultural purposes.

(b) Notwithstanding the provisions of subsection (a), all existing county building codes are void one year after the promulgation of a state building code by the state Fire Commission as provided in chapter twenty-nine, article three, section five-b of this code.

Upon the voidance of the county's existing building code, if the county commission votes to adopt a building code, it must be the state building code promulgated pursuant to chapter twenty-nine, article three, section five-b of this code.

(c) In addition to all other powers and duties now conferred by law upon county commissions, county commissions are hereby authorized and empowered, by order duly entered of record, to adopt such state building code upon promulgation by the state Fire Commission. However, such state building code shall not apply to or affect any territory within the boundaries of any municipal corporation which has not adopted the state building code.

Martin, Jodee

From: Courtney Boyd <cboyd@wvfoodandfarm.org>
Sent: Thursday, July 26, 2018 2:32 PM
To: Bowden, Cassey
Cc: Spencer Moss
Subject: Public Comment on Agritourism Bill

Hi Cassey,

We recently spoke about the growing number of farmers and land owners who are pursuing forest farming in WV, and it occurred to us that it might be beneficial to include that area in the agritourism rules.

If you believe this might provide some clarity in the rules feel free to adapt.

I've underlined the proposed change.

2.7 "Farm" means an area of land used for the production, cultivation, growing, harvesting, or processing of agricultural products. This can include forest farming.

Thanks,

—
Courtney Boyd
Placemaking &
Policy Coordinator
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C:(606) 481-0776

Connect with your local farmers at www.farmfreshwv.com