

[First Reprint]

**ASSEMBLY, No. 2014**

**STATE OF NEW JERSEY**  
**208th LEGISLATURE**

INTRODUCED MAY 7, 1998

**Sponsored by:**

**Assemblyman JOHN C. GIBSON**

**District 1 (Cape May, Atlantic and Cumberland)**

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Co-Sponsored by:**

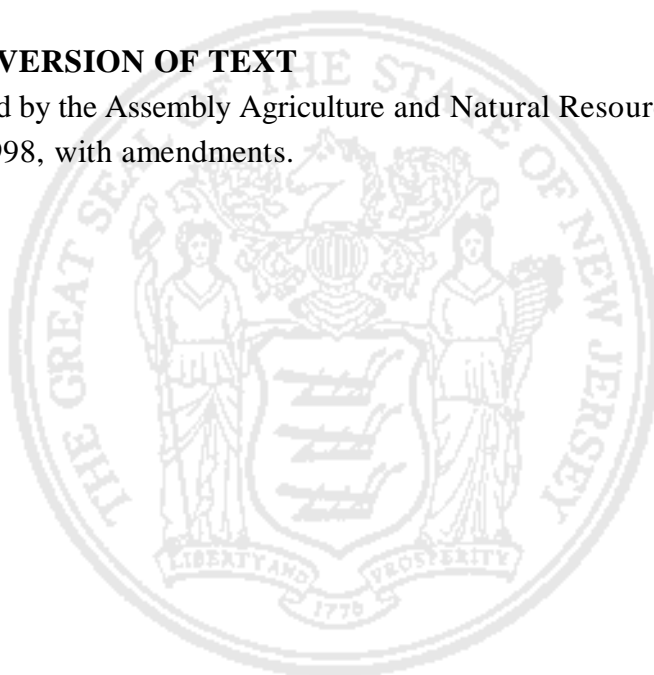
**Assemblymen Lance, Blee, Malone, Biondi, Gregg, Kelly, Assemblywoman  
Farragher, Assemblyman Garrett, Senators Singer, Zane and Schluter**

**SYNOPSIS**

Revises the "Right to Farm Act."

**CURRENT VERSION OF TEXT**

As reported by the Assembly Agriculture and Natural Resources Committee  
on June 4, 1998, with amendments.



**(Sponsorship Updated As Of: 6/23/1998)**

1 AN ACT concerning agriculture, amending and supplementing  
2 P.L.1983, c.31, and amending P.L.1968, c.410.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 3 of P.L.1983, c.31 (C.4:1C-3) is amended to read as  
8 follows:

9 3. As used in this act:

10 "Board" or "county board" means a county agriculture development  
11 board established pursuant to section 7 of P.L.1983, c.32 (C.4:1C-14).

12 **[a.]** "Commercial farm" means **[any place]** (1) a farm management  
13 unit of no less than five acres producing agricultural or horticultural  
14 products worth **[\$2,500.00]** \$2,500 or more annually **[:]** , and  
15 satisfying the eligibility criteria for differential property taxation  
16 pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48  
17 (C.54:4-23.1 et seq.), or (2) a farm management unit less than five  
18 acres, producing agricultural or horticultural products worth \$50,000  
19 or more annually and otherwise satisfying the eligibility criteria for  
20 differential property taxation pursuant to the "Farmland Assessment  
21 Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

22 **[b.]** "Committee" means the State Agriculture Development  
23 Committee established pursuant to section 4 of <sup>1</sup>**[this act]** P.L.1983,  
24 c.31 (C.4:1C-4)<sup>1</sup> .

25 "Farm management unit" means a parcel or parcels of land, whether  
26 contiguous or noncontiguous, together with agricultural or  
27 horticultural buildings, structures and facilities, producing agricultural  
28 or horticultural products, and operated as a single enterprise.

29 "Farm market" means a facility used for the wholesale or retail  
30 marketing of the agricultural output of a commercial farm, and  
31 products that contribute to farm income, except that if a farm market  
32 is used for retail marketing at least 51% of the annual gross sales of  
33 the retail farm market shall be generated from sales of agricultural  
34 output of the commercial farm, or at least 51% of the sales area shall  
35 be devoted to the sale of agricultural output of the commercial farm,  
36 and except that if a retail farm market is located on land less than five  
37 acres in area, the land on which the farm market is located shall  
38 produce annually agricultural or horticultural products worth at least  
39 \$2,500.

40 (cf: P.L.1983, c.31, s.3)

**EXPLANATION** - Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AAN committee amendments adopted June 4, 1998.

1       2. Section 6 of P.L.1983, c.31 (C.4:1C-9) is amended to read as  
2 follows:

3       6. ~~【The】~~ Notwithstanding the provisions of any municipal or  
4 county <sup>1</sup>【law,】<sup>1</sup> ordinance <sup>1</sup>, resolution, <sup>1</sup> or regulation to the  
5 contrary, the owner or operator of a commercial farm, located in an  
6 area in which <sup>1</sup>, as of December 31, 1997 or thereafter, <sup>1</sup> agriculture is  
7 a permitted use under the municipal zoning ordinance <sup>1</sup>【in effect on  
8 December 31, 1997】 and is consistent with the municipal master plan<sup>1</sup>  
9 , or which commercial farm is in operation as of the effective date of  
10 P.L. , c. (C. ) (pending in the Legislature as this bill), 【which  
11 meets the eligibility criteria for differential property taxation pursuant  
12 to the "Farmland Assessment Act of 1964," P.L.1964, c.48  
13 (C.54:4-23.1 et seq.)】 and the operation of which conforms to  
14 agricultural management practices recommended by the committee and  
15 adopted pursuant to the provisions of the "Administrative Procedure  
16 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or whose specific  
17 operation or practice has been determined by the appropriate county  
18 board, or in a county where no county board exists, the committee, to  
19 constitute a generally accepted agricultural operation or practice, and  
20 all relevant federal or State statutes or rules and regulations adopted  
21 pursuant thereto, and which does not pose a direct threat to public  
22 health and safety may:

23       a. Produce agricultural and horticultural crops, trees and forest  
24 products, livestock, and poultry and other commodities as described  
25 in the Standard Industrial Classification for agriculture, forestry,  
26 fishing and trapping;

27       b. Process and package the agricultural output of the commercial  
28 farm;

29       c. Provide for the ~~【wholesale and retail marketing of the~~  
30 ~~agricultural output of the commercial farm, and related products that~~  
31 ~~contribute to farm income】~~ operation of a farm market, including the  
32 construction of building and parking areas in conformance with  
33 ~~【municipal】~~ <sup>1</sup>municipal<sup>1</sup> standards <sup>1</sup>~~【recommended by the State~~  
34 ~~Agriculture Development Committee and adopted pursuant to the~~  
35 ~~provisions of the "Administrative Procedure Act," P.L.1968, c.410~~  
36 ~~(C.52:14B-1 et seq.)】~~<sup>1</sup> ;

37       d. Replenish soil nutrients and improve soil tilth;

38       e. Control pests, predators and diseases of plants and animals;

39       f. Clear woodlands using open burning and other techniques, install  
40 and maintain vegetative and terrain alterations and other physical  
41 facilities for water and soil conservation and surface water control in  
42 wetland areas; ~~【and】~~

43       g. Conduct on-site disposal of organic agricultural wastes ;

44       h. Conduct <sup>1</sup>【agriculture related】 agriculture-related<sup>1</sup> educational  
45 and farm-based recreational activities provided that the activities are

1 related to marketing the agricultural or horticultural output of the  
2 commercial farm; and

3 i. Engage in any other agricultural activity as determined by the  
4 State Agriculture Development Committee and adopted by rule or  
5 regulation pursuant to the provisions of the "Administrative Procedure  
6 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) .

7 (cf: P.L.1983, c.31, s.6)

8

9 3. Section 7 of P.L.1983, c.31 (C.4:1C-10) is amended to read as  
10 follows:

11 7. In all relevant actions filed subsequent to the effective date of  
12 <sup>1</sup>[this act] P.L. , c. (C. ) (pending in the Legislature as this  
13 bill)<sup>1</sup> , there shall exist **[a rebuttable] an irrebuttable** presumption that  
14 no commercial agricultural operation, activity or structure which  
15 conforms to agricultural management practices recommended by the  
16 committee and adopted pursuant to the provisions of the  
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
18 seq.), or whose specific operation or practice has been determined by  
19 the appropriate county board, or in a county where no county board  
20 exists, the committee, to constitute a generally accepted agricultural  
21 operation or practice , and all relevant federal or State statutes or rules  
22 and regulations adopted pursuant thereto and which does not pose a  
23 direct threat to public health and safety, shall constitute a public or  
24 private nuisance, nor shall any such operation, activity or structure be  
25 deemed to otherwise invade or interfere with the use and enjoyment  
26 of any other land or property.

27 (cf: P.L.1983, c.31, s.7)

28

29 4. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read  
30 as follows:

31 4. (a) Prior to the adoption, amendment, or repeal of any rule,  
32 except as may be otherwise provided, the agency shall:

33 (1) Give at least 30 days' notice of its intended action. The notice  
34 shall include a statement of either the terms or substance of the  
35 intended action or a description of the subjects and issues involved,  
36 and the time when, the place where, and the manner in which  
37 interested persons may present their views thereon. The notice shall  
38 be mailed to all persons who have made timely requests of the agency  
39 for advance notice of its rule-making proceedings and in addition to  
40 other public notice required by law shall be published in the New  
41 Jersey Register and shall be filed with the President of the Senate and  
42 the Speaker of the General Assembly. The notice shall be additionally  
43 publicized in such manner as the agency deems most appropriate in  
44 order to inform those persons most likely to be affected by or  
45 interested in the intended action. Methods that may be employed  
46 include publication of the notice in newspapers of general circulation

1 or in trade, industry, governmental or professional publications,  
2 distribution of press releases to the news media and posting of notices  
3 in appropriate locations;

4 (2) Prepare for public distribution at the time the notice appears in  
5 the Register a statement setting forth a summary of the proposed rule,  
6 a clear and concise explanation of the purpose and effect of the rule,  
7 the specific legal authority under which its adoption is authorized, a  
8 description of the expected socio-economic impact of the rule, a  
9 regulatory flexibility analysis, or the statement of finding that a  
10 regulatory flexibility analysis is not required, as provided in section 4  
11 of P.L.1986, c.169 (C.52:14B-19) **[and]** , a jobs impact statement  
12 which shall include an assessment of the number of jobs to be  
13 generated or lost if the proposed rule takes effect , and an agriculture  
14 industry impact statement as provided in section <sup>1</sup>**[8]** <sup>7</sup> of P.L. , c.  
15 (C. ) (pending in the Legislature as this bill); and

16 (3) Afford all interested persons reasonable opportunity to submit  
17 data, views, or arguments, orally or in writing. The agency shall  
18 consider fully all written and oral submissions respecting the proposed  
19 rule.

20 The agency shall conduct a public hearing on the proposed rule at  
21 the request of a committee of the Legislature, or a governmental  
22 agency or subdivision, provided such request is made to the agency  
23 within 15 days following publication of the proposed rule in the  
24 Register. The agency shall provide at least 15 days' notice of such  
25 hearing, which shall be conducted in accordance with the provisions  
26 of subsection (g) of this section;

27 (4) Prepare for public distribution a report listing all parties  
28 offering written or oral submissions concerning the rule, summarizing  
29 the content of the submissions and providing the agency's response to  
30 the data, views and arguments contained in the submissions.

31 (b) A rule prescribing the organization of an agency may be  
32 adopted at any time without prior notice or hearing. Such rules shall  
33 be effective upon filing in accordance with section 5 of this act or  
34 upon any later date specified by the agency.

35 (c) If an agency finds that an imminent peril to the public health,  
36 safety, or welfare requires adoption of a rule upon fewer than 30 days'  
37 notice and states in writing its reasons for that finding, and the  
38 Governor concurs in writing that an imminent peril exists, it may  
39 proceed without prior notice or hearing, or upon any abbreviated  
40 notice and hearing that it finds practicable, to adopt the rule. The rule  
41 shall be effective for a period of not more than 60 days unless each  
42 house of the Legislature passes a resolution concurring in its extension  
43 for a period of not more than 60 additional days. The rule shall not be  
44 effective for more than 120 days unless repromulgated in accordance  
45 with normal rule-making procedures.

46 (d) No rule hereafter adopted is valid unless adopted in substantial

1 compliance with this act. A proceeding to contest any rule on the  
2 ground of noncompliance with the procedural requirements of this act  
3 shall be commenced within one year from the effective date of the rule.

4 (e) An agency may file a notice of intent with respect to a proposed  
5 rule-making proceeding with the Office of Administrative Law, for  
6 publication in the New Jersey Register at any time prior to the formal  
7 notice of action required in subsection (a) of this section. The notice  
8 shall be for the purpose of eliciting the views of interested parties on  
9 an action prior to the filing of a formal rule proposal. An agency may  
10 use informal conferences and consultations as means of obtaining the  
11 viewpoints and advice of interested persons with respect to  
12 contemplated rule-making. An agency may also appoint committees of  
13 experts or interested persons or representatives of the general public  
14 to advise it with respect to any contemplated rule-making.

15 (f) An interested person may petition an agency to promulgate,  
16 amend or repeal any rule. Each agency shall prescribe the form for the  
17 petition and the procedure for the submission, consideration and  
18 disposition of the petition. The petition shall state clearly and  
19 concisely:

20 (1) The substance or nature of the rule-making which is requested;

21 (2) The reasons for the request and the petitioner's interest in the  
22 request;

23 (3) References to the authority of the agency to take the requested  
24 action.

25 Within 30 days following receipt of any such petition, the agency  
26 shall either deny the petition, giving a written statement of its reasons,  
27 or shall proceed to act on the petition, which action may include the  
28 initiation of a formal rule-making proceeding. Upon the receipt of the  
29 petition, the agency shall file a notice stating the name of the petitioner  
30 and the nature of the request with the Office of Administrative Law for  
31 publication in the New Jersey Register. Notice of formal agency action  
32 on such petition shall also be filed with the division for publication in  
33 the Register.

34 (g) All public hearings shall be conducted by a hearing officer, who  
35 may be an official of the agency, a member of its staff, a person on  
36 assignment from another agency, a person from the Office of  
37 Administrative Law assigned pursuant to subsection o. of section 5 of  
38 P.L.1978, c.67 (C.52:14F-5) or an independent contractor. The  
39 hearing officer shall have the responsibility to make recommendations  
40 to the agency regarding the adoption, amendment or repeal of a rule.  
41 These recommendations shall be made public. At the beginning of  
42 each hearing, or series of hearings, the agency, if it has made a  
43 proposal, shall present a summary of the factual information on which  
44 its proposal is based, and shall respond to questions posed by any  
45 interested party. Hearings shall be conducted at such times and in  
46 locations which shall afford interested parties the opportunity to

1 attend. A verbatim transcript of each hearing shall be maintained, and  
2 copies of the transcript shall be available to the public at no more than  
3 the actual cost.

4 (cf: P.L.1995, c.166, s.1)

5  
6 <sup>1</sup>【5. (New section) a. The municipal clerk of each municipality  
7 shall maintain records of all farm properties within a municipality  
8 which shall list the names of the owner, and the location of farms  
9 receiving differential property taxation pursuant to the "Farmland  
10 Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

11 b. The municipal clerk of each municipality shall also maintain  
12 records of the name of the owner, and the location of all other  
13 commercial farms, at the request of the owner or operator of the  
14 particular farm, which meet the definition of commercial farm but do  
15 not receive differential property taxation pursuant to the "Farmland  
16 Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

17 c. At the time of entering into a contract for the sale of real  
18 property located within 200 feet of the property line of a commercial  
19 farm or farm property as set forth in the municipal clerk's records  
20 pursuant to subsections a. and b. of this section, the seller shall notify  
21 the purchaser of the existence of agricultural operations in the area and  
22 the types of agricultural activities, as set forth in section 6 of  
23 P.L.1983, c.31 (C.4:1C-9), which may take place.

24 d. A seller's obligation to notify shall be limited to those farms  
25 which are set forth in the municipal clerk's records.】<sup>1</sup>

26  
27 <sup>1</sup>【6.】5.<sup>1</sup> (New section) a. Any person aggrieved by the operation  
28 of a commercial farm shall file a complaint with the applicable county  
29 agriculture development board or the State Agriculture Development  
30 Committee in counties where no county board exists prior to filing an  
31 action in court.

32 b. In the event the dispute concerns activities that are addressed by  
33 an agricultural management practice recommended by the committee  
34 and adopted pursuant to the provisions of the "Administrative  
35 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the county  
36 board shall hold a public hearing and issue findings and  
37 recommendations within 60 days of the receipt of the complaint.

38 c. In the event the committee has not recommended an agricultural  
39 management practice concerning activities addressed by a complaint,  
40 the county board shall forward the complaint to the committee for a  
41 determination of whether the disputed agricultural operation  
42 constitutes a generally accepted agricultural operation or practice.  
43 Upon receipt of the complaint, the committee shall hold a public  
44 hearing and issue its decision, in writing, to the county board. The  
45 county board shall hold a public hearing and issue its findings and

1 recommendations within 60 days of the receipt of the committee's  
2 decision.

3 d. Any person aggrieved by the decision of the county board shall  
4 appeal the decision to the committee within 10 days. The committee  
5 shall schedule a hearing and make a determination within 90 days of  
6 receipt of the petition for review.

7 e. The decision of the State Agriculture Development Committee  
8 shall be binding, subject to the right of appeal to the Appellate  
9 Division of the Superior Court. <sup>1</sup>Any decision of a county agriculture  
10 development board that is not appealed shall be binding.<sup>1</sup>

11

12 <sup>1</sup>[7.] 6.<sup>1</sup> (New section) Any person aggrieved by any decision of  
13 a county board regarding specific agricultural management practices  
14 or conflict resolution, may appeal the decision to the State Agriculture  
15 Development Committee in accordance with <sup>1</sup>[procedures established  
16 by the committee pursuant to]<sup>1</sup> the provisions of the "Administrative  
17 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The decision  
18 of the State Agriculture Development Committee shall be considered  
19 a final administrative agency decision.

20

21 <sup>1</sup>[8.] 7.<sup>1</sup> (New section) a. In proposing a rule for adoption, the  
22 agency involved shall issue an agriculture industry impact statement  
23 setting forth the nature and extent of the impact of the proposed rule  
24 on the agricultural industry that shall be included in the notice of a  
25 proposed rule as required by subsection (a) of section 4 of P.L.1968,  
26 c.410 (C.52:14B-4).

27 b. <sup>1</sup>[The] During the public comment period on the proposed rule,  
28 the<sup>1</sup> State Agriculture Development Committee shall review the rule  
29 proposal to determine its impact on the agriculture industry of the  
30 State.

31 c. If the State Agriculture Development Committee determines that  
32 the proposed rule may have a <sup>1</sup>[significantly] significant<sup>1</sup> adverse  
33 impact on the agricultural industry of the State and notifies the  
34 relevant agency <sup>1</sup>of that determination during the public comment  
35 period on the proposed rule<sup>1</sup>, the agency shall [suspend  
36 implementation of the proposed rule as it pertains to the agriculture  
37 industry for a period of 180 days.

38 d. Within 90 days of its preliminary determination, the State  
39 Agriculture Development Committee may hold public hearings and  
40 issue a written report containing the recommendations of the  
41 committee concerning the proposed rule. Notice of the hearing shall  
42 be afforded in accordance with the provisions of the "Open Public  
43 Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.)

44 e. Prior to the adoption of any rule, the relevant State agency shall  
45 notify the State Agriculture Development Committee, in writing, of  
46 the reasons for accepting, conditionally accepting or rejecting the

1 recommendations of the committee] consult with the State Agriculture  
2 Development Committee prior to the adoption of the rule<sup>1</sup> .

3  
4 <sup>1</sup>[9.] §.1 (New section) <sup>1</sup> a.<sup>1</sup> The <sup>1</sup> [Attorney General] State  
5 Agriculture Development Committee<sup>1</sup> shall adopt, <sup>1</sup>in consultation  
6 with the Attorney General and<sup>1</sup> pursuant to the provisions of the  
7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
8 seq.), standards determining what constitutes a direct threat to public  
9 safety pursuant to section 6 and section 7 of P.L.1983, c.31 (C.4:1C-9  
10 and C.4:1C-10).

11 <sup>1</sup>b. The State Agriculture Development Committee shall adopt, in  
12 consultation with the Department of Health and Human Services and  
13 pursuant to the provisions of the "Administrative Procedure Act,"  
14 P.L.1968, c.410 (C.52:14B-1 et seq.), standards determining what  
15 constitutes a direct threat to public health pursuant to section 6 and  
16 section 7 of P.L.1983, c.31 (C.4:1C-9 and C.4:1C-10).

17 c. The State Agriculture Development Committee shall adopt,  
18 pursuant to the provisions of the "Administrative Procedure Act,"  
19 P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary  
20 to implement the provisions of P.L. , c. (C. ) (pending in the  
21 Legislature as this bill) and P.L.1983, c.31 (C.4:1C-1 et al.).<sup>1</sup>

22  
23 <sup>1</sup>[10. (New section) The Commissioner of Health and Senior  
24 Services shall adopt, pursuant to the provisions of the "Administrative  
25 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), standards  
26 determining what constitutes a direct threat to public health pursuant  
27 to section 6 and section 7 of P.L.1983, c.31 (C.4:1C-9 and C.4:1C-  
28 10).]<sup>1</sup>

29  
30 <sup>1</sup>[11. (New section) The State Agriculture Development  
31 Committee shall adopt, pursuant to the provisions of the  
32 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
33 seq.), rules and regulations necessary to implement the provisions of  
34 this act (pending in the Legislature as this bill) and P.L.1983, c.31  
35 (C.4:1C-1 et al).]<sup>1</sup>

36  
37 <sup>1</sup>[12.] 9.<sup>1</sup> This act shall take effect immediately.