

SENATE, No. 1075

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MAY 18, 1998

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Monmouth and Ocean)

Senator RAYMOND J. ZANE

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Senator Schluter

SYNOPSIS

Revises the "Right to Farm Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/19/1998)

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 this act.

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

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

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

40
41 2. Section 6 of P.L.1983, c.31 (C.4:1C-9) is amended to read as
42 follows:

43 6. **[The]** Notwithstanding the provisions of any municipal or

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.

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

18 a. Produce agricultural and horticultural crops, trees and forest
19 products, livestock, and poultry and other commodities as described
20 in the Standard Industrial Classification for agriculture, forestry,
21 fishing and trapping;

22 b. Process and package the agricultural output of the commercial
23 farm;

24 c. Provide for the [wholesale and retail marketing of the
25 agricultural output of the commercial farm, and related products that
26 contribute to farm income] operation of a farm market , including the
27 construction of building and parking areas in conformance with
28 [municipal] standards recommended by the State Agriculture
29 Development Committee and adopted pursuant to the provisions of the
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
31 seq.);

32 d. Replenish soil nutrients and improve soil tilth;

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

34 f. Clear woodlands using open burning and other techniques, install
35 and maintain vegetative and terrain alterations and other physical
36 facilities for water and soil conservation and surface water control in
37 wetland areas; [and]

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

39 h. Conduct agriculture related educational and farm-based
40 recreational activities provided that the activities are related to
41 marketing the agricultural or horticultural output of the commercial
42 farm; and

43 i. Engage in any other agricultural activity as determined by the
44 State Agriculture Development Committee and adopted by rule or

1 regulation pursuant to the provisions of the "Administrative Procedure
2 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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

4

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

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

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

23

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

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

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

45 (2) Prepare for public distribution at the time the notice appears in
46 the Register a statement setting forth a summary of the proposed rule,

1 a clear and concise explanation of the purpose and effect of the rule,
2 the specific legal authority under which its adoption is authorized, a
3 description of the expected socio-economic impact of the rule, a
4 regulatory flexibility analysis, or the statement of finding that a
5 regulatory flexibility analysis is not required, as provided in section 4
6 of P.L.1986, c.169 (C.52:14B-19) **【and】** , a jobs impact statement
7 which shall include an assessment of the number of jobs to be
8 generated or lost if the proposed rule takes effect , and an agriculture
9 industry impact statement as provided in section 8 of P.L. , c. (C.)
10 (pending in the Legislature as this bill); and

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

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

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

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

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

41 (d) No rule hereafter adopted is valid unless adopted in substantial
42 compliance with this act. A proceeding to contest any rule on the
43 ground of noncompliance with the procedural requirements of this act
44 shall be commenced within one year from the effective date of the rule.

45 (e) An agency may file a notice of intent with respect to a proposed
46 rule-making proceeding with the Office of Administrative Law, for

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

10 (f) An interested person may petition an agency to promulgate,
11 amend or repeal any rule. Each agency shall prescribe the form for the
12 petition and the procedure for the submission, consideration and
13 disposition of the petition. The petition shall state clearly and
14 concisely:

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

16 (2) The reasons for the request and the petitioner's interest in the
17 request;

18 (3) References to the authority of the agency to take the requested
19 action.

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

29 (g) All public hearings shall be conducted by a hearing officer, who
30 may be an official of the agency, a member of its staff, a person on
31 assignment from another agency, a person from the Office of
32 Administrative Law assigned pursuant to subsection o. of section 5 of
33 P.L.1978, c.67 (C.52:14F-5) or an independent contractor. The
34 hearing officer shall have the responsibility to make recommendations
35 to the agency regarding the adoption, amendment or repeal of a rule.
36 These recommendations shall be made public. At the beginning of
37 each hearing, or series of hearings, the agency, if it has made a
38 proposal, shall present a summary of the factual information on which
39 its proposal is based, and shall respond to questions posed by any
40 interested party. Hearings shall be conducted at such times and in
41 locations which shall afford interested parties the opportunity to
42 attend. A verbatim transcript of each hearing shall be maintained, and
43 copies of the transcript shall be available to the public at no more than
44 the actual cost.

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

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

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

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

19 d. A seller's obligation to notify shall be limited to those farms
20 which are set forth in the municipal clerk's records.

21

22 6. (New section) a. Any person aggrieved by the operation of a
23 commercial farm shall file a complaint with the applicable county
24 agriculture development board or the State Agriculture Development
25 Committee in counties where no county board exists prior to filing an
26 action in court.

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

33 c. In the event the committee has not recommended an agricultural
34 management practice concerning activities addressed by a complaint,
35 the county board shall forward the complaint to the committee for a
36 determination of whether the disputed agricultural operation
37 constitutes a generally accepted agricultural operation or practice.
38 Upon receipt of the complaint, the committee shall hold a public
39 hearing and issue its decision, in writing, to the county board. The
40 county board shall hold a public hearing and issue its findings and
41 recommendations within 60 days of the receipt of the committee's
42 decision.

43 d. Any person aggrieved by the decision of the county board shall
44 appeal the decision to the committee within 10 days. The committee
45 shall schedule a hearing and make a determination within 90 days of
46 receipt of the petition for review.

1 e. The decision of the State Agriculture Development Committee
2 shall be binding, subject to the right of appeal to the Appellate
3 Division of the Superior Court.

4
5 7. (New section) Any person aggrieved by any decision of a
6 county board regarding specific agricultural management practices or
7 conflict resolution, may appeal the decision to the State Agriculture
8 Development Committee in accordance with procedures established by
9 the committee pursuant to the provisions of the "Administrative
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The decision
11 of the State Agriculture Development Committee shall be considered
12 a final administrative agency decision.

13
14 8. (New section) a. In proposing a rule for adoption, the agency
15 involved shall issue an agriculture industry impact statement setting
16 forth the nature and extent of the impact of the proposed rule on the
17 agricultural industry that shall be included in the notice of a proposed
18 rule as required by subsection (a) of section 4 of P.L.1968, c.410
19 (C.52:14B-4).

20 b. The State Agriculture Development Committee shall review the
21 rule proposal to determine its impact on the agriculture industry of the
22 State.

23 c. If the State Agriculture Development Committee determines that
24 the proposed rule may have a significantly adverse impact on the
25 agricultural industry of the State and notifies the relevant agency, the
26 agency shall suspend implementation of the proposed rule as it pertains
27 to the agriculture industry for a period of 180 days.

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

34 e. Prior to the adoption of any rule, the relevant State agency shall
35 notify the State Agriculture Development Committee, in writing, of
36 the reasons for accepting, conditionally accepting or rejecting the
37 recommendations of the committee.

38
39 9. (New section) The Attorney General shall adopt, pursuant to
40 the provisions of the "Administrative Procedure Act," P.L.1968, c.410
41 (C.52:14B-1 et seq.), standards determining what constitutes a direct
42 threat to public safety pursuant to section 6 and section 7 of P.L.1983,
43 c.31 (C.4:1C-9 and C.4:1C-10).

44
45 10. (New section) The Commissioner of Health and Senior
46 Services shall adopt, pursuant to the provisions of the "Administrative

1 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), standards
2 determining what constitutes a direct threat to public health pursuant
3 to section 6 and section 7 of P.L.1983, c.31 (C.4:1C-9 and C.4:1C-
4 10).

5
6 11. (New section) The State Agriculture Development Committee
7 shall adopt, pursuant to the provisions of the "Administrative
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
9 regulations necessary to implement the provisions of this act (pending
10 in the Legislature as this bill) and P.L.1983, c.31 (C.4:1C-1 et al).

11

12 12. This act shall take effect immediately.

13

14

15

STATEMENT

16

17 This bill would amend the "Right to Farm Act" to strengthen the
18 legal protections provided farmers. The "Right to Farm Act" was an
19 innovative initiative when it was enacted in 1983. Fifteen years of
20 experience, magnified by court decisions, has demonstrated certain
21 weaknesses in parts of the act. The act was the subject of a
22 comprehensive study conducted by Rutgers University for the
23 Department of Agriculture that included options for improving the act.
24 Subsequently, an Agricultural Right to Farm Task Force was
25 established by the State Board of Agriculture to study the act and to
26 make specific recommendations for its enhancement. This bill would
27 implement the recommendations of the task force.

28 The bill would revise the definition of a commercial farm to: (1)
29 allow for noncontiguous parcels of land operated as a single
30 enterprise; (2) require that the farm operation meet the eligibility
31 criteria for farmland assessment; and (3) provide an exception to the
32 requirement that the farm operation be at least five acres in the case
33 where the farm operation produces agricultural or horticultural
34 products worth \$50,000 or more annually and otherwise satisfies the
35 eligibility criteria for farmland assessment.

36 The bill would expand the list of agricultural activities that would
37 preempt county or municipal regulation if they are conducted in a
38 manner that does not pose a direct threat to public health and safety
39 to include: (1) conducting agriculture related educational and farm-
40 based recreational activities provided that the activities are related to
41 marketing the agricultural or horticultural output of the commercial
42 farm; and (2) engaging in any other farm activity as determined by the
43 State Agriculture Development Committee (SADC) and adopted by
44 rule or regulation. The bill would clarify the term "farm market," the
45 operation of which had received protection in the original law, to
46 mean: a facility used for the wholesale or retail marketing of the

1 agricultural output of a commercial farm, and products that contribute
2 to farm income, except that if a farm market is used for retail
3 marketing at least 51% of the annual gross sales of the retail farm
4 market shall be generated from sales of agricultural output of the
5 commercial farm, or at least 51% of the sales area shall be devoted to
6 the sale of agricultural output of the commercial farm, and except that
7 if a retail farm market is located on land less than five acres in area,
8 the land on which the farm market is located shall produce annually
9 agricultural or horticultural products worth at least \$2,500. The bill
10 would also direct the SADC to adopt standards for the construction
11 of building and parking areas used for farm markets.

12 The bill would change the existing "rebuttable presumption" given
13 to agricultural operations in public or private nuisance actions to
14 "irrebuttable presumption." This standard currently exists for
15 agricultural operations in the farmland preservation program.

16 The bill would require State agencies to issue an agricultural
17 industry impact statement when proposing a rule for adoption. The
18 SADC would review the rule to determine whether it would have a
19 significant impact on the agricultural industry. If the SADC makes
20 such a finding, the agency shall suspend implementation of the
21 proposed rule as it pertains to the agricultural industry for a period of
22 180 days. The SADC shall issue a report containing its
23 recommendations concerning the proposed rule. Prior to the adoption
24 of any rule, the relevant State agency shall notify the SADC, in
25 writing, of the reasons for accepting, conditionally accepting or
26 rejecting the recommendations of the committee.

27 The bill would require the municipal clerk of each municipality to
28 maintain certain records regarding farms within the municipality and
29 the communication by sellers to purchasers of certain information
30 about nearby farms.

31 The bill would establish a procedure for the resolution of
32 complaints by persons aggrieved by the operation of a commercial
33 farm.

34 Finally, the bill would provide rulemaking authority to the SADC
35 for the implementation of the "Right to Farm Act," to the Attorney
36 General for determining what constitutes a direct threat to public
37 safety pursuant to the "Right to Farm Act," and to the Commissioner
38 of Health and Senior Services for determining what constitutes a direct
39 threat to public health pursuant to the "Right to Farm Act."