

SENATE ECONOMIC GROWTH, AGRICULTURE AND
TOURISM COMMITTEE

STATEMENT TO

SENATE, No. 1075

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 4, 1998

The Senate Economic Growth, Agriculture and Tourism Committee favorably reports Senate Bill No. 1075 with committee amendments.

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

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

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

agricultural output of a commercial farm, and products that contribute to farm income, except that if a farm market is used for retail marketing at least 51% of the annual gross sales of the retail farm market shall be generated from sales of agricultural output of the commercial farm, or at least 51% of the sales area shall be devoted to the sale of agricultural output of the commercial farm, and except that if a retail farm market is located on land less than five acres in area, the land on which the farm market is located shall produce annually agricultural or horticultural products worth at least \$2,500.

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

The bill would require State agencies to issue an agricultural industry impact statement when proposing a rule for adoption. The SADC would review the rule to determine whether it would have a significant impact on the agricultural industry. If the SADC makes such a finding, the agency proposing the rule would be required to consult with the SADC prior to the adoption of the rule.

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

Finally, the bill would provide rulemaking authority to the SADC for the implementation of the "Right to Farm Act," for determining, in consultation with the Attorney General, what constitutes a direct threat to public safety pursuant to the "Right to Farm Act," and for determining, in consultation with the Commissioner of Health and Senior Services what constitutes a direct threat to public health pursuant to the "Right to Farm Act."

The committee amendments:

(1) revise the procedure regarding agriculture impact statements to provide that if the SADC makes a determination during the public comment period that a proposed rule may have a significant adverse impact on the agricultural industry, the agency proposing the rule shall consult with the SADC prior to the adoption of the rule;

(2) provide that the "irrebuttable presumption" standard afforded agricultural operations in public or private nuisance actions is prospective;

(3) provide that municipal standards, rather than SADC-approved standards, shall govern the operation of farm markets, as is the case under current law;

(4) delete the municipal recordkeeping requirements in the bill as well as the provisions requiring certain sellers of real property to provide notice to purchasers of nearby commercial farms or farm properties; and

(5) make certain technical and clarifying changes to the bill.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 2014 (1R) of 1998.