

4:1C—32.1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2005 **CHAPTER:** 314

NJSA: 4:1C-32.1 (Allows commercial nonagricultural activities to occur, and personal wireless service facilities to be erected, on preserved farmland under certain circumstances)

BILL NO: S206 (Substituted for A559)

SPONSOR(S): B. Smith and others

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Agriculture and Natural Resources; State Government

SENATE: Economic Growth

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 9, 2006

SENATE: January 9, 2006

DATE OF APPROVAL: January 12, 2006

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (Senate Committee Substitute (2R) for S206 enacted)

S206

[SPONSOR'S STATEMENT:](#) (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes [6-14-2004 \(Ag & NR\)](#)
[1-5-2006 \(State Gov't\)](#)

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

A559

[SPONSOR'S STATEMENT:](#) (Begins on page 3 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes [10-18-2004 \(Ag & NR\)](#)
[1-5-2006 \(State Gov't\)](#)

[SENATE:](#) No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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No

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No

IS 1/29/08

P.L. 2005, CHAPTER 314, *approved January 12, 2006*
Senate Committee Substitute (*Second Reprint*) for
Senate, No. 206

1 AN ACT concerning commercial nonagricultural activities ²and
2 personal wireless service facilities² on preserved farmland ² and
3 supplementing P.L.1983, c.32 (C.4:1C-11 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. a. Any person who owns ²qualifying² land on which a
9 development easement was conveyed to, or retained by, the
10 committee, a board, or a qualifying tax exempt nonprofit organization
11 pursuant to the provisions of section 24 of P.L.1983, c.32 (C.4:1C-
12 31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), ²[sections 37 through
13 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or] section
14 1 of P.L.1989, c.28 (C.4:1C-38),² section 1 of P.L.1999, c.180
15 (C.4:1C-43.1) ², or sections 37 through 40 of P.L.1999, c.152
16 (C.13:8C-37 through C.13:8C-40)² may apply for a special permit
17 pursuant to this section to allow a commercial nonagricultural activity
18 to occur on the land.

19 b. The committee, in its sole discretion, may issue a special permit
20 pursuant to this section to the landowner if the development easement
21 is owned by the committee. The committee and the board, in their
22 joint discretion, may authorize the committee to issue a special permit
23 pursuant to this section to the landowner if the development easement
24 is owned by a board. The committee and the qualifying tax exempt
25 nonprofit organization, in their joint discretion, may authorize the
26 committee to issue a special permit pursuant to this section to the
27 landowner if the development easement is owned by a qualifying tax
28 exempt nonprofit organization.

29 c. A special permit may be issued pursuant to this section provided
30 that:

31 (1) the land is a commercial farm as defined pursuant to section 3
32 of P.L.1983, c.31 (C.4:1C-3);

33 (2) there is no commercial nonagricultural activity already in
34 existence on the land at the time of application for the special permit
35 or on any portion of the farm that is not subject to the development
36 easement, except that the committee may waive the requirements of
37 this paragraph, either entirely or subject to any appropriate conditions,

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAN committee amendments adopted June 14, 2004.

² Assembly ASG committee amendments adopted January 5, 2006.

- 1 (a) if such preexisting commercial nonagricultural activity is deemed
2 to be of a minor or insignificant nature or to rely principally upon farm
3 products, as defined pursuant to R.S.4:10-1, derived from the farm, or
4 (b) for other good cause shown by the applicant;
- 5 (3) the permit is for one commercial nonagricultural activity only;
- 6 (4) no more than one permit may be valid at any one time for use
7 on the land;
- 8 (5) the permit is for a maximum of 20 years duration;
- 9 (6) the permit does not run with the land and may not be assigned;
- 10 (7) the commercial nonagricultural activity utilizes, or is supported
11 through the occupation of, ²[existing] a structure or² structures
12 ²existing on the date of enactment of this act², except that the permit
13 may authorize, subject to the requirements of paragraph (12) of this
14 subsection, ²[a structural improvement upon the land which creates a
15 footprint of no greater than 500 square feet in area, by means of
16 expanding an existing structure or by constructing or erecting a new
17 structure] an expansion of an existing structure or structures which
18 expansion does not exceed 500 square feet in footprint area in total for
19 all of the structures², provided ²that, for any such expansion,² the
20 applicant demonstrates to the satisfaction of the committee that:
- 21 (a) the purpose or use of the ²[structural improvement]
22 expansion² is necessary to the operation or functioning of the
23 commercial nonagricultural activity;
- 24 (b) ²[when the purpose or use of the structural improvement is to
25 support telecommunications or another commercial nonagricultural
26 activity, (i) there are no existing structures on the land which could be
27 utilized or occupied to adequately support the commercial
28 nonagricultural activity, and (ii) the relevant deficiencies associated
29 with each such existing structure, as indicated in a written description
30 provided by the applicant, support that conclusion;
- 31 (c)]² the area of the proposed footprint ²of the expansion² is
32 reasonably calculated based solely upon the demands of
33 accommodating the commercial nonagricultural activity and does not
34 incorporate excess space; and
- 35 ²[(d)] (c)² the location, design, ²height,² and aesthetic attributes
36 ²[, or any combination thereof, of the structural improvement
37 represent, to the greatest degree possible without creating an undue
38 hardship on the applicant or an unreasonable impediment to the
39 commercial nonagricultural activity,] of the expansion reflect² the
40 public interest of preserving the natural and unadulterated appearance
41 of the landscape ²and structures² ;
- 42 (8) ²[the footprint of the commercial nonagricultural activity, in
43 the aggregate, does not exceed ¹[1,000 square feet in area, except that
44 the area of]¹ the footprint ¹[for any primary residence which is] of

1 structures existing on the date of enactment of this act¹ utilized for the
2 commercial nonagricultural activity ¹[shall not be included or
3 considered for the purposes of this paragraph] except as permitted
4 otherwise pursuant to paragraph (7) of this subsection¹ ;

5 (9)]² the commercial nonagricultural activity does not interfere
6 with the use of the land for agricultural production;

7 ²[(10)] (9)² the commercial nonagricultural activity utilizes the
8 land ²[in its] and structures in their ²existing condition except as
9 allowed otherwise pursuant to paragraph (7) of this subsection;

10 ²[(11)] (10)² the commercial nonagricultural activity does not
11 have an adverse impact upon the soils, water resources, air quality, or
12 other natural resources of the land or the surrounding area ², and does
13 not involve the creation of additional parking spaces whether paved or
14 unpaved² ; ²[and]

15 (11) the commercial nonagricultural activity is not a high traffic
16 volume business; and²

17 (12) any necessary local zoning and land use approvals and any
18 other applicable approvals that may be required by federal, State, or
19 local law, rule, regulation, or ordinance are obtained for the
20 commercial nonagricultural activity.

21 d. In addition to those factors enumerated under subsection c. of
22 this section, the committee, in evaluating an application for a special
23 permit, shall also consider such additional factors as traffic generated
24 and the number of employees required by the proposed commercial
25 nonagricultural activity so as to limit to the maximum extent possible
26 the intensity of the activity and its impact on the land and the
27 surrounding area.

28 e. ²[The application fee for a special permit authorized pursuant
29 to this section shall be \$1,000, payable to the committee regardless of
30 whether or not a permit is issued. All proceeds from the collection of
31 application fees pursuant to this section shall be utilized by the
32 committee for farmland preservation purposes.

33 f. The committee may suspend or revoke a special permit issued
34 pursuant to this section for a violation of any term or condition of the
35 permit or any provision of this section.

36 g. For the purposes of this section, "qualifying tax exempt
37 nonprofit organization" shall have the same meaning as set forth in
38 section 3 of P.L.1999, c.152 (C.13:8C-3).

39 h. The committee shall, within 60 days after the date of enactment
40 of this act, develop guidelines for the implementation and
41 administration of this act, including, but not limited to, procedures and
42 standards for the filing, evaluation, and approval of permit
43 applications, which generally, but with specific emphasis on
44 applications involving a proposed structural improvement, seek to
45 balance, as equally important concepts, the public interest in protecting
46 farmland from further development as a means of preserving

1 agriculture and enhancing the beauty and character of the State and the
2 local communities where farmland has been preserved with the public
3 interest in providing support to sustain and strengthen the agricultural
4 industry in the State.

5 i. The committee shall adopt, pursuant to the "Administrative
6 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and
7 regulations necessary to carry out the purposes of this act. For the
8 purposes of this section:

9 "Commercial nonagricultural activity" shall not include a personal
10 wireless service facility as defined and regulated pursuant to section
11 2 of this act;

12 "Qualifying land" means a farm that was preserved for farmland
13 preservation purposes prior to the date of enactment of this act under
14 any of the laws cited in subsection a. of this section and for which no
15 portion of the farm was excluded in the deed of easement from
16 preservation; and

17 "Qualifying tax exempt nonprofit organization" shall have the same
18 meaning as set forth in section 3 of P.L.1999, c.152 (C.13:8C-3).²

19
20 ²2. a. Any person who owns land on which a development
21 easement was conveyed to, or retained by, the committee, a board, or
22 a qualifying tax exempt nonprofit organization pursuant to the
23 provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of
24 P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-38),
25 section 1 of P.L.1999, c.180 (C.4:1C-43.1), sections 37 through 40 of
26 P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or any other State
27 law enacted for farmland preservation purposes may apply for a special
28 permit pursuant to this section to allow a personal wireless service
29 facility to be erected on the land.

30 b. The committee, in its sole discretion, may issue a special permit
31 pursuant to this section to the landowner if the development easement
32 is owned by the committee. The committee and the board, in their
33 joint discretion, may authorize the committee to issue a special permit
34 pursuant to this section to the landowner if the development easement
35 is owned by a board. The committee and the qualifying tax exempt
36 nonprofit organization, in their joint discretion, may authorize the
37 committee to issue a special permit pursuant to this section to the
38 landowner if the development easement is owned by a qualifying tax
39 exempt nonprofit organization.

40 c. A special permit may be issued pursuant to this section provided
41 that:

42 (1) the land is a commercial farm as defined pursuant to section 3
43 of P.L.1983, c.31 (C.4:1C-3);

44 (2) there is no commercial nonagricultural activity already in
45 existence on the land at the time of application for the special permit
46 or on any portion of the farm that is not subject to the development

1 easement, except that the committee may waive the requirements of
2 this paragraph, either entirely or subject to any appropriate conditions,
3 (a) if such preexisting commercial nonagricultural activity is deemed
4 to be of a minor or insignificant nature or to rely principally upon farm
5 products, as defined pursuant to R.S.4:10-1, derived from the farm, or
6 (b) for other good cause shown by the applicant;

7 (3) the permit is for one personal wireless service facility only,
8 although this paragraph shall not prohibit the committee, board, or
9 qualifying tax exempt nonprofit organization, as the case may be, from
10 approving the sharing of the single permitted facility by more than one
11 personal wireless service company, or the use of the facility for other
12 compatible wireless communication uses deemed by the committee,
13 board, or qualifying tax exempt nonprofit organization, as the case
14 may be, to not be violative of the intent or the goals, purposes, or
15 requirements of this section;

16 (4) no more than one permit may be valid at any one time for use
17 on the land;

18 (5) the permit is for a maximum of 20 years duration;

19 (6) the permit does not run with the land and may not be assigned;

20 (7) the personal wireless service facility utilizes, or is supported
21 through the occupation of, existing structures, except that the permit
22 may authorize, subject to the requirements of paragraph (12) of this
23 subsection, an expansion of an existing structure or structures which
24 expansion does not exceed 500 square feet in footprint area in total for
25 all of the structures, or the construction of a new structure not to
26 exceed 500 square feet in footprint area which is independent of any
27 existing structure, provided that in either case the applicant
28 demonstrates to the satisfaction of the committee that:

29 (a) the expansion or the new structure is necessary to the operation
30 or functioning of the personal wireless service facility;

31 (b) for a new structure, (i) there are no existing structures on the
32 land which could be utilized or occupied to adequately support the
33 personal wireless service facility, and (ii) the relevant deficiencies
34 associated with each such existing structure, as indicated in a written
35 description provided by the applicant, support that conclusion; and

36 (c) the area of the proposed footprint of the expansion or the new
37 structure is reasonably calculated based solely upon the demands of
38 accommodating the personal wireless service facility and does not
39 incorporate excess space;

40 (8) the location, design, height, and aesthetic attributes of the
41 personal wireless service facility reflect, to the greatest degree possible
42 without creating an undue hardship on the applicant or an
43 unreasonable impediment to the erection of the personal wireless
44 service facility, the public interest of preserving the natural and
45 unadulterated appearance of the landscape and structures;

46 (9) the personal wireless service facility does not interfere with the

1 use of the land for agricultural production;

2 (10) the personal wireless service facility utilizes the land and
3 structures in their existing condition except as allowed otherwise
4 pursuant to paragraph (7) of this subsection;

5 (11) the personal wireless service facility does not have an adverse
6 impact upon the soils, water resources, air quality, or other natural
7 resources of the land or the surrounding area, and does not involve the
8 creation of additional parking spaces whether paved or unpaved; and

9 (12) any necessary local zoning and land use approvals and any
10 other applicable approvals that may be required by federal, State, or
11 local law, rule, regulation, or ordinance are obtained for the personal
12 wireless service facility.

13 d. In addition to those factors enumerated under subsection c. of
14 this section, the committee, in evaluating an application for a special
15 permit for a personal wireless service facility, shall also consider such
16 additional factors as traffic generated and the number of employees
17 required by the proposed personal wireless service facility so as to
18 limit to the maximum extent possible the intensity of the activity and
19 its impact on the land and the surrounding area.

20 e. Notwithstanding any law, rule, or regulation to the contrary, a
21 personal wireless service company whose proposed facility is the
22 subject of a permit application pursuant to this section shall be
23 required to obtain all applicable local zoning and land use approvals
24 and any other applicable approvals that may be required by State or
25 local law, rule, regulation, or ordinance even if the proposed facility
26 includes a compatible wireless communication use, such as law
27 enforcement or emergency response communication equipment, which
28 may otherwise allow the proposed facility to be exempt from obtaining
29 any such approvals.

30 f. As a condition of the issuance of a permit pursuant to this
31 section, a personal wireless service facility shall agree to allow, at no
32 charge to the requesting State or local governmental entity, the sharing
33 of the facility for any State or local government owned or sponsored
34 compatible wireless communication use for public purposes, such as
35 law enforcement or emergency response communication equipment,
36 approved by the committee.

37 g. For the purposes of this section:

38 "Qualifying tax exempt nonprofit organization" shall have the same
39 meaning as set forth in section 3 of P.L.1999, c.152 (C.13:8C-3); and

40 "Personal wireless service facility" means a personal wireless
41 service tower and any associated equipment and structures necessary
42 to operate and maintain that tower, as regulated pursuant to federal
43 law.²

44

45 ²³ a. The application fee for a special permit authorized pursuant
46 to either section 1 or section 2 of this act shall be \$1,000, payable to

1 the committee regardless of whether or not a permit is issued. All
2 proceeds from the collection of application fees by the committee
3 pursuant to this act shall be utilized by the committee for farmland
4 preservation purposes.

5 b. The committee may suspend or revoke a special permit issued
6 pursuant to either section 1 or section 2 of this act for a violation of
7 any term or condition of the permit or any provision of the respective
8 section.

9 c. The committee shall, within 60 days after the date of enactment
10 of this act, develop guidelines for the implementation and
11 administration of this act, including, but not limited to, procedures and
12 standards for the filing, evaluation, and approval of permit
13 applications, which seek to balance, as equally important concepts, the
14 public interest in protecting farmland from further development as a
15 means of preserving agriculture and agricultural structures and
16 enhancing the beauty and character of the State and the local
17 communities where farmland has been preserved with the public
18 interest in providing support to sustain and strengthen the agricultural
19 industry in the State.

20 d. Every two years, the committee shall prepare a report on the
21 implementation of this act. The report shall include a survey and
22 inventory of all commercial nonagricultural activities occurring on, and
23 of all personal wireless service facilities placed on, preserved farmland
24 in accordance with this act; the extent to which existing structures,
25 such as barns, sheds, and silos, are used for those purposes, and how
26 those structures have been modified therefor; the extent to which new
27 structures, instead of existing structures, have been erected to host
28 personal wireless service facilities and the number and type of new
29 structures used to disguise those facilities, such as artificial trees and
30 faux barns, sheds, and silos; and such other information as the
31 committee deems useful. The report prepared pursuant to this
32 subsection shall be transmitted to the Governor, the President of the
33 Senate, the Speaker of the General Assembly, the respective
34 chairpersons of the Senate Economic Growth Committee, the Senate
35 Environment Committee, the Assembly Agriculture and Natural
36 Resources Committee, and the Assembly Environment and Solid
37 Waste Committee or their designated successors. Copies of the report
38 shall also be made available to the public upon request and free of
39 charge, and shall be posted on the website of the State Agriculture
40 Development Committee.

41 e. The committee shall adopt, pursuant to the "Administrative
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and
43 regulations necessary to carry out the purposes of this act.²

44
45 ²[2.] 4.² This act shall take effect on the 60th day after the date
46 of enactment.

1

2

3 Allows commercial nonagricultural activities to occur, and personal

4 wireless service facilities to be erected, on preserved farmland under

5 certain circumstances.

SENATE, No. 206

STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator LEONARD LANCE

District 23 (Warren and Hunterdon)

SYNOPSIS

Allows commercial nonagricultural activities to occur on preserved farmland under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning commercial nonagricultural activities on preserved
2 farmland and supplementing P.L.1983, c.32 (C.4:1C-11 et seq.).

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

6
7 1. a. Any person who owns land on which a development
8 easement was conveyed to, or retained by, the committee, a board, or
9 a qualifying tax exempt nonprofit organization pursuant to the
10 provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of
11 P.L.1988, c.4 (C.4:1C-31.1), sections 37 through 40 of P.L.1999,
12 c.152 (C.13:8C-37 through C.13:8C-40), or section 1 of P.L.1999,
13 c.180 (C.4:1C-43.1) may apply for a special permit pursuant to this
14 section to allow a commercial nonagricultural activity to occur on the
15 land.

16 b. The committee, in its sole discretion, may issue a special permit
17 pursuant to this section to the landowner if the development easement
18 is owned by the committee. The committee and the board, in their
19 joint discretion, may issue a special permit pursuant to this section to
20 the landowner if the development easement is owned by a board. The
21 committee and the qualifying tax exempt nonprofit organization, in
22 their joint discretion, may issue a special permit pursuant to this
23 section to the landowner if the development easement is owned by a
24 qualifying tax exempt nonprofit organization.

25 c. A special permit may be issued pursuant to this section provided
26 that:

27 (1) the land is a commercial farm as defined pursuant to section 3
28 of P.L.1983, c.31 (C.4:1C-3);

29 (2) the permit is for one commercial nonagricultural activity only;

30 (3) the permit is for a maximum of 20 years duration;

31 (4) the permit does not run with the land and may not be assigned;

32 (5) the commercial nonagricultural activity utilizes existing
33 structures and does not involve construction of new structures, except
34 that the existing structures may be expanded up to 500 square feet for
35 a purpose or use necessary and ancillary to the operation or
36 functioning of the commercial nonagricultural activity;

37 (6) the commercial nonagricultural activity does not interfere with
38 the use of the land for agricultural production and utilizes the land in
39 its existing condition;

40 (7) no more than one permit may be issued at any one time for the
41 land; and

42 (8) any necessary local zoning approvals and any other applicable
43 approvals that may be required by federal, State, or local law, rule,
44 regulation, or ordinance are obtained for the commercial
45 nonagricultural activity.

46 d. The application fee for a special permit authorized pursuant to

1 this section shall be \$1,000, payable to the committee regardless of
2 whether or not a permit is issued. All proceeds from the collection of
3 application fees pursuant to this section shall be utilized by the
4 committee for farmland preservation purposes.

5 e. The committee may suspend or revoke a special permit issued
6 pursuant to this section for a violation of any term or condition of the
7 permit or any provision of this section.

8 f. For the purposes of this section, "qualifying tax exempt nonprofit
9 organization" shall have the same meaning as set forth in section 3 of
10 P.L.1999, c.152 (C.13:8C-3).

11 g. The committee shall adopt, pursuant to the "Administrative
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and
13 regulations necessary to carry out the purposes of this act.

14
15 2. This act shall take effect immediately.
16
17

18 STATEMENT
19

20 This bill would authorize the State Agriculture Development
21 Committee (SADC) in its discretion, upon application by an interested
22 owner of a farm permanently preserved under various farmland
23 preservation programs authorized and funded by State law, to issue a
24 special permit to allow the landowner to engage in or accommodate
25 certain commercial nonagricultural activities on the farm, provided
26 certain approvals are obtained and certain stringent criteria are met.

27 The bill requires SADC approval for the issuance of such a permit,
28 no matter what type of entity (that is, the SADC, a county agriculture
29 development board, or a nonprofit organization) actually owns or
30 holds the development easement on a preserved farm. In the case of
31 a preserved farm for which the development easement is owned or
32 held by a county agriculture development board or a nonprofit
33 organization, the respective board or nonprofit organization, as the
34 case may be, must also approve of the issuance of the special permit.

35 A special permit may be issued pursuant to the bill provided that the
36 following conditions and requirements are met:

37 (1) the land is a commercial farm as defined pursuant to section 3
38 of P.L.1983, c.31 (C.4:1C-3);

39 (2) the permit is for one commercial nonagricultural activity only;

40 (3) the permit is for a maximum of 20 years duration;

41 (4) the permit does not run with the land and may not be assigned;

42 (5) the commercial nonagricultural activity utilizes existing
43 structures and does not involve construction of new structures, except
44 that the existing structures may be expanded up to 500 square feet for
45 a purpose or use necessary and ancillary to the operation or
46 functioning of the commercial nonagricultural activity;

1 (6) the commercial nonagricultural activity does not interfere with
2 the use of the land for agricultural production and utilizes the land in
3 its existing condition;

4 (7) no more than one permit may be issued at any one time for the
5 land; and

6 (8) any necessary local zoning approvals and any other applicable
7 approvals that may be required by federal, State, or local law, rule,
8 regulation, or ordinance are obtained for the commercial
9 nonagricultural activity.

10 The bill provides for a nonrefundable \$1,000 permit application fee
11 and requires that all proceeds therefrom be dedicated for use for
12 farmland preservation purposes.

13 The purpose of this bill is to allow an owner of a permanently
14 preserved farm to engage in or accommodate a commercial
15 nonagricultural activity on the farm for the purpose of supplementing
16 the farmer's livelihood from agriculture. By allowing farmers this
17 source of supplemental income, the bill will help preserve agriculture
18 as an industry and way of life in the Garden State.

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 206

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 2004

The Assembly Agriculture and Natural Resources Committee reports favorably and with committee amendments Senate Bill No. 206 (SCS).

This bill would authorize the State Agriculture Development Committee (SADC) in its discretion, upon application by an interested owner of a farm permanently preserved under various farmland preservation programs authorized and funded by State law, to issue a special permit to allow the landowner to engage in or accommodate certain commercial nonagricultural activities on the farm, provided certain approvals are obtained and certain stringent criteria are met.

The bill requires SADC approval for the issuance of such a permit, no matter what type of entity (that is, the SADC, a county agriculture development board, or a nonprofit organization) actually owns or holds the development easement on a preserved farm. In the case of a preserved farm for which the development easement is owned or held by a county agriculture development board or a nonprofit organization, the respective board or nonprofit organization, as the case may be, must also approve of the issuance of the special permit.

A special permit may be issued pursuant to the bill, as amended by the committee, provided that the following conditions and requirements are met:

- (1) the land is a commercial farm as defined by law;
- (2) there is no commercial nonagricultural activity already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the SADC may waive the requirements of this provision, either entirely or subject to any appropriate conditions, (a) if such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products derived from the farm, or (b) for other good cause shown by the applicant;
- (3) the permit is for one commercial nonagricultural activity only;

(4) no more than one permit may be valid at any one time for use on the land;

(5) the permit is for a maximum of 20 years duration;

(6) the permit does not run with the land and may not be assigned;

(7) the commercial nonagricultural activity utilizes, or is supported through the occupation of, existing structures, except that the permit may authorize, subject to local zoning and applicable federal, State, and local approvals, regulations, and requirements, a structural improvement upon the land which creates a footprint of no greater than 500 square feet in area, by means of expanding an existing structure or by constructing or erecting a new structure, provided the applicant demonstrates to the satisfaction of the SADC that:

(a) the purpose or use of the structural improvement is necessary to the operation or functioning of the commercial nonagricultural activity;

(b) when the purpose or use of the structural improvement is to support telecommunications or another commercial nonagricultural activity, (i) there are no existing structures on the land which could be utilized or occupied to adequately support the commercial nonagricultural activity, and (ii) the relevant deficiencies associated with each such existing structure, as indicated in a written description provided by the applicant, support that conclusion;

(c) the area of the proposed footprint is reasonably calculated based solely upon the demands of accommodating the commercial nonagricultural activity and does not incorporate excess space; and

(d) the location, design, and aesthetic attributes, or any combination thereof, of the structural improvement represent, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the commercial nonagricultural activity, the public interest of preserving the natural and unadulterated appearance of the landscape;

(8) the footprint of the commercial nonagricultural activity, in the aggregate, does not exceed the footprint of structures existing on the bill's enactment date utilized for the commercial nonagricultural activity except as permitted otherwise pursuant to (7) above;

(9) the commercial nonagricultural activity does not interfere with the use of the land for agricultural production;

(10) the commercial nonagricultural activity utilizes the land in its existing condition except as allowed otherwise pursuant to paragraph (7) above;

(11) the commercial nonagricultural activity does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area; and

(12) any necessary local zoning and land use approvals and any other applicable approvals that may be required by federal, State, or local law, rule, regulation, or ordinance are obtained for the commercial nonagricultural activity.

The bill also provides that, in addition to those factors enumerated

above, the SADC, in evaluating an application for a special permit, must also consider such additional factors as traffic generated and the number of employees required by the proposed commercial nonagricultural activity so as to limit to the maximum extent possible the intensity of the activity and its impact on the land and the surrounding area.

Finally, the bill provides for a nonrefundable \$1,000 permit application fee and requires that all proceeds therefrom be dedicated for use for farmland preservation purposes.

The committee amended the bill to change the limitation expressed in (8) above. Before the amendment, the bill provided instead that the footprint of the commercial nonagricultural activity, in the aggregate, must not exceed 1,000 square feet in area, except that the area of the footprint for any primary residence which is utilized for the commercial nonagricultural activity would not be included or considered for those purposes. That language was deleted in favor of the language set forth in (8) above.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 206**

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 5, 2006

The Assembly State Government Committee reports favorably and with committee amendments Senate, No. 206 SCS (1R).

This bill, as amended by the committee, would allow certain farms preserved under various farmland preservation programs and meeting certain strict qualifying criteria and conditions to be able to apply for and perhaps obtain a permit of limited duration (up to 20 years) to allow a commercial nonagricultural activity or a personal wireless service facility (i.e., a cellular telephone tower) to occur or to be placed on the land. The issuance of these permits would be either at the sole discretion of the State Agriculture Development Committee (SADC), or in those cases when the development easement is owned by a county agriculture development board or a nonprofit organization, at the joint discretion of the SADC and the county agriculture development board or nonprofit organization, as appropriate.

By allowing a commercial nonagricultural activity to occur in certain limited instances on preserved farmland, it is the bill sponsors' and the committee's opinion that the bill as amended corrects an inequity, detailed further below, encountered by some farmers who have chosen to preserve their farms. It is also the bill sponsors' and the committee's opinion that the accommodation to allow cell towers on preserved farmland in certain limited instances and where appropriate and necessary serves the public good by potentially improving cellular communications, especially when they are used for emergency purposes, while also providing needed income to often struggling farmers.

Under the bill as amended by the committee, the only type of preserved farm that could apply for a commercial nonagricultural activity permit would be a commercial farm that was preserved for farmland preservation purposes prior to the date of enactment of the

bill and for which no portion of the farm was excluded in the deed of easement from preservation. The purpose of this provision is to rectify an inequity for those farmers who chose to participate earlier in the history of the program but who did not realize the possibility or potential benefit of excluding a portion of the farm from preservation so that it could be later used for a commercial nonagricultural activity which could provide supplemental income to, among other things, help offset increasingly costly farming operations. Farmers entering preservation programs later in the process have learned since to omit portions of the property from preservation for just such a reason.

The bill as amended imposes a number of qualifying criteria and conditions on these farms and on the type of commercial nonagricultural activity which may be permitted. These criteria and conditions ensure that only small enterprises, such as bed and breakfasts, tractor repair shops, antique shops, the leasing of space to store equipment, etc., which meet local zoning requirements and which require only a few parking spaces could ever qualify.

It is the intent of the bill sponsors and of the committee that franchises, chain stores, and big box stores and businesses should not and cannot be permitted under this bill for a number of important public policy reasons, including obvious incompatibility with the rural character of the land and the adverse impacts that parking and traffic generated by those types of businesses would have on the land.

The bill as amended by the committee also addresses the issue of when and how the installation of cellular telephone towers may be allowed on any preserved farm in the State, regardless of when and how it was preserved. Again, the purpose of this provision is to allow a farmer to receive supplemental income for the de minimis use of a very small portion of the farm for this important and compatible public purpose, but only in accordance with strict qualifying criteria and conditions as set forth in the bill as amended.

In addition, the bill as amended requires the SADC to prepare a report every two years on the implementation of this bill. The report must include a survey and inventory of all commercial nonagricultural activities occurring on, and of all personal wireless service facilities placed on, preserved farmland in accordance with the bill; the extent to which existing structures, such as barns, sheds, and silos, are used for those purposes, and how those structures have been modified therefor; the extent to which new structures, instead of existing structures, have been erected to host personal wireless service facilities and the number and type of new structures used to disguise those facilities, such as artificial trees and faux barns, sheds, and silos; and such other information as the SADC deems useful.

It is also the intent of the bill sponsors and of the committee that, in implementing this bill, the SADC shall ensure that: (1) existing structures, such as barns, sheds, and silos, are used in all cases for the allowed commercial nonagricultural activities and as much as possible for cell towers; (2) new structures would be allowed to be erected to

accommodate cell towers only as a last resort; (3) any allowed modification of existing structures for either purpose is sensitive to the historic and aesthetic values and character of agricultural structures; (4) erection of new structures to accommodate cell towers would be equally sensitive to such values and character; (5) cell towers are disguised as much as possible in the form of agricultural or natural looking structures or features; and (6) viewsheds are preserved to the greatest extent possible.

As amended and reported by the committee, this bill is identical to Assembly, No. 559 ACS as also amended and reported by the committee.

COMMITTEE AMENDMENTS

The committee amendments:

(1) restructure the bill into two separate sections pertaining respectively to commercial nonagricultural activities and cell towers, and a third section which applies to both types of uses;

(2) add to and modify various criteria and conditions prescribed in the bill which must be met before a permit may be issued for a commercial nonagricultural activity or a cell tower on a preserved farm;

(3) add definitions of key terms used in the bill; and

(4) add a reporting requirement for the State Agriculture Development Committee regarding implementation of the bill.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 206**

STATE OF NEW JERSEY

DATED: MARCH 8, 2004

The Senate Economic Growth Committee reports favorably a Senate Committee Substitute for Senate Bill No. 206.

This committee substitute would authorize the State Agriculture Development Committee (SADC) in its discretion, upon application by an interested owner of a farm permanently preserved under various farmland preservation programs authorized and funded by State law, to issue a special permit to allow the landowner to engage in or accommodate certain commercial nonagricultural activities on the farm, provided certain approvals are obtained and certain stringent criteria are met.

The committee substitute requires SADC approval for the issuance of such a permit, no matter what type of entity (that is, the SADC, a county agriculture development board, or a nonprofit organization) actually owns or holds the development easement on a preserved farm. In the case of a preserved farm for which the development easement is owned or held by a county agriculture development board or a nonprofit organization, the respective board or nonprofit organization, as the case may be, must also approve of the issuance of the special permit.

A special permit may be issued pursuant to the committee substitute provided that the following conditions and requirements are met:

- (1) the land is a commercial farm as defined by law;
- (2) there is no commercial nonagricultural activity already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the SADC may waive the requirements of this provision, either entirely or subject to any appropriate conditions, (a) if such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products derived from the farm, or (b) for other good cause shown by the applicant;
- (3) the permit is for one commercial nonagricultural activity only;
- (4) no more than one permit may be valid at any one time for use on the land;

(5) the permit is for a maximum of 20 years duration;

(6) the permit does not run with the land and may not be assigned;

(7) the commercial nonagricultural activity utilizes, or is supported through the occupation of, existing structures, except that the permit may authorize, subject to local zoning and applicable federal, State, and local approvals, regulations, and requirements, a structural improvement upon the land which creates a footprint of no greater than 500 square feet in area, by means of expanding an existing structure or by constructing or erecting a new structure, provided the applicant demonstrates to the satisfaction of the SADC that:

(a) the purpose or use of the structural improvement is necessary to the operation or functioning of the commercial nonagricultural activity;

(b) when the purpose or use of the structural improvement is to support telecommunications or another commercial nonagricultural activity, (i) there are no existing structures on the land which could be utilized or occupied to adequately support the commercial nonagricultural activity, and (ii) the relevant deficiencies associated with each such existing structure, as indicated in a written description provided by the applicant, support that conclusion;

(c) the area of the proposed footprint is reasonably calculated based solely upon the demands of accommodating the commercial nonagricultural activity and does not incorporate excess space; and

(d) the location, design, and aesthetic attributes, or any combination thereof, of the structural improvement represent, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the commercial nonagricultural activity, the public interest of preserving the natural and unadulterated appearance of the landscape;

(8) the footprint of the commercial nonagricultural activity, in the aggregate, does not exceed 1,000 square feet in area, except that the area of the footprint for any primary residence which is utilized for the commercial nonagricultural activity shall not be included or considered for those purposes;

(9) the commercial nonagricultural activity does not interfere with the use of the land for agricultural production;

(10) the commercial nonagricultural activity utilizes the land in its existing condition except as allowed otherwise pursuant to paragraph (7) above;

(11) the commercial nonagricultural activity does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area; and

(12) any necessary local zoning and land use approvals and any other applicable approvals that may be required by federal, State, or local law, rule, regulation, or ordinance are obtained for the commercial nonagricultural activity.

The committee substitute also provides that, in addition to those factors enumerated above, the SADC, in evaluating an application for

a special permit, must also consider such additional factors as traffic generated and the number of employees required by the proposed commercial nonagricultural activity so as to limit to the maximum extent possible the intensity of the activity and its impact on the land and the surrounding area.

Finally, the committee substitute provides for a nonrefundable \$1,000 permit application fee and requires that all proceeds therefrom be dedicated for use for farmland preservation purposes.

ASSEMBLY, No. 559

STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Assemblyman ROBERT J. SMITH

District 4 (Camden and Gloucester)

Co-Sponsored by:

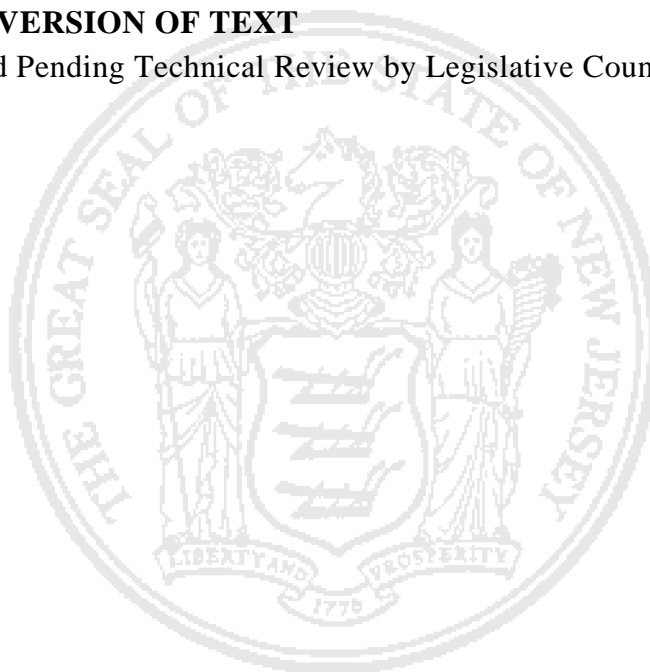
Assemblyman Dancer

SYNOPSIS

Allows commercial nonagricultural activities to occur on preserved farmland under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 10/8/2004)

1 AN ACT concerning commercial nonagricultural activities on preserved
2 farmland and supplementing P.L.1983, c.32 (C.4:1C-11 et seq.).

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

6
7 1. a. Any person who owns land on which a development
8 easement was conveyed to, or retained by, the committee, a board, or
9 a qualifying tax exempt nonprofit organization pursuant to the
10 provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of
11 P.L.1988, c.4 (C.4:1C-31.1), sections 37 through 40 of P.L.1999,
12 c.152 (C.13:8C-37 through C.13:8C-40), or section 1 of P.L.1999,
13 c.180 (C.4:1C-43.1) may apply for a special permit pursuant to this
14 section to allow a commercial nonagricultural activity to occur on the
15 land.

16 b. The committee, in its sole discretion, may issue a special permit
17 pursuant to this section to the landowner if the development easement
18 is owned by the committee. The committee and the board, in their
19 joint discretion, may issue a special permit pursuant to this section to
20 the landowner if the development easement is owned by a board. The
21 committee and the qualifying tax exempt nonprofit organization, in
22 their joint discretion, may issue a special permit pursuant to this
23 section to the landowner if the development easement is owned by a
24 qualifying tax exempt nonprofit organization.

25 c. A special permit may be issued pursuant to this section provided
26 that:

27 (1) the land is a commercial farm as defined pursuant to section 3
28 of P.L.1983, c.31 (C.4:1C-3);

29 (2) the permit is for one commercial nonagricultural activity only;

30 (3) the permit is for a maximum of 20 years duration;

31 (4) the permit does not run with the land and may not be assigned;

32 (5) the commercial nonagricultural activity utilizes existing
33 structures and does not involve construction of new structures, except
34 that the existing structures may be expanded up to 500 square feet for
35 a purpose or use necessary and ancillary to the operation or
36 functioning of the commercial nonagricultural activity;

37 (6) the commercial nonagricultural activity does not interfere with
38 the use of the land for agricultural production and utilizes the land in
39 its existing condition;

40 (7) no more than one permit may be issued at any one time for the
41 land; and

42 (8) any necessary local zoning approvals and any other applicable
43 approvals that may be required by federal, State, or local law, rule,
44 regulation, or ordinance are obtained for the commercial
45 nonagricultural activity.

1 d. The application fee for a special permit authorized pursuant to
2 this section shall be \$1,000, payable to the committee regardless of
3 whether or not a permit is issued. All proceeds from the collection of
4 application fees pursuant to this section shall be utilized by the
5 committee for farmland preservation purposes.

6 e. The committee may suspend or revoke a special permit issued
7 pursuant to this section for a violation of any term or condition of the
8 permit or any provision of this section.

9 f. For the purposes of this section, "qualifying tax exempt nonprofit
10 organization" shall have the same meaning as set forth in section 3 of
11 P.L.1999, c.152 (C.13:8C-3).

12 g. The committee shall adopt, pursuant to the "Administrative
13 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and
14 regulations necessary to carry out the purposes of this act.

15
16 2. This act shall take effect immediately.

17
18
19 STATEMENT

20
21 This bill would authorize the State Agriculture Development
22 Committee (SADC) in its discretion, upon application by an interested
23 owner of a farm permanently preserved under various farmland
24 preservation programs authorized and funded by State law, to issue a
25 special permit to allow the landowner to engage in or accommodate
26 certain commercial nonagricultural activities on the farm, provided
27 certain approvals are obtained and certain stringent criteria are met.

28 The bill requires SADC approval for the issuance of such a permit,
29 no matter what type of entity (that is, the SADC, a county agriculture
30 development board, or a nonprofit organization) actually owns or
31 holds the development easement on a preserved farm. In the case of
32 a preserved farm for which the development easement is owned or
33 held by a county agriculture development board or a nonprofit
34 organization, the respective board or nonprofit organization, as the
35 case may be, must also approve of the issuance of the special permit.

36 A special permit may be issued pursuant to the bill provided that the
37 following conditions and requirements are met:

38 (1) the land is a commercial farm as defined pursuant to section 3
39 of P.L.1983, c.31 (C.4:1C-3);

40 (2) the permit is for one commercial nonagricultural activity only;

41 (3) the permit is for a maximum of 20 years duration;

42 (4) the permit does not run with the land and may not be assigned;

43 (5) the commercial nonagricultural activity utilizes existing
44 structures and does not involve construction of new structures, except
45 that the existing structures may be expanded up to 500 square feet for
46 a purpose or use necessary and ancillary to the operation or
47 functioning of the commercial nonagricultural activity;

1 (6) the commercial nonagricultural activity does not interfere with
2 the use of the land for agricultural production and utilizes the land in
3 its existing condition;

4 (7) no more than one permit may be issued at any one time for the
5 land; and

6 (8) any necessary local zoning approvals and any other applicable
7 approvals that may be required by federal, State, or local law, rule,
8 regulation, or ordinance are obtained for the commercial
9 nonagricultural activity.

10 The bill provides for a nonrefundable \$1,000 permit application fee
11 and requires that all proceeds therefrom be dedicated for use for
12 farmland preservation purposes.

13 The purpose of this bill is to allow an owner of a permanently
14 preserved farm to engage in or accommodate a commercial
15 nonagricultural activity on the farm for the purpose of supplementing
16 the farmer's livelihood from agriculture. By allowing farmers this
17 source of supplemental income, the bill will help preserve agriculture
18 as an industry and way of life in the Garden State.

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 559

STATE OF NEW JERSEY

DATED: OCTOBER 18, 2004

The Assembly Agriculture and Natural Resources Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 559.

This committee substitute would authorize the State Agriculture Development Committee (SADC) in its discretion, upon application by an interested owner of a farm permanently preserved under various farmland preservation programs authorized and funded by State law, to issue a special permit to allow the landowner to engage in or accommodate certain commercial nonagricultural activities on the farm, provided certain approvals are obtained and certain stringent criteria are met.

The committee substitute requires SADC approval for the issuance of such a permit, no matter what type of entity (that is, the SADC, a county agriculture development board, or a nonprofit organization) actually owns or holds the development easement on a preserved farm. In the case of a preserved farm for which the development easement is owned or held by a county agriculture development board or a nonprofit organization, the respective board or nonprofit organization, as the case may be, must also approve of the issuance of the special permit.

A special permit may be issued pursuant to the committee substitute, provided that the following conditions and requirements are met:

- (1) the land is a commercial farm as defined by law;
- (2) there is no commercial nonagricultural activity already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the SADC may waive the requirements of this provision, either entirely or subject to any appropriate conditions, (a) if such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products derived from the farm, or (b) for other good cause shown by the applicant;

(3) the permit is for one commercial nonagricultural activity only;
(4) no more than one permit may be valid at any one time for use on the land;

(5) the permit is for a maximum of 20 years duration;

(6) the permit does not run with the land and may not be assigned;

(7) the commercial nonagricultural activity utilizes, or is supported through the occupation of, existing structures, except that the permit may authorize, subject to local zoning and applicable federal, State, and local approvals, regulations, and requirements, a structural improvement upon the land which creates a footprint of no greater than 500 square feet in area, by means of expanding an existing structure or by constructing or erecting a new structure, provided the applicant demonstrates to the satisfaction of the SADC that:

(a) the purpose or use of the structural improvement is necessary to the operation or functioning of the commercial nonagricultural activity;

(b) when the purpose or use of the structural improvement is to support telecommunications or another commercial nonagricultural activity, (i) there are no existing structures on the land which could be utilized or occupied to adequately support the commercial nonagricultural activity, and (ii) the relevant deficiencies associated with each such existing structure, as indicated in a written description provided by the applicant, support that conclusion;

(c) the area of the proposed footprint is reasonably calculated based solely upon the demands of accommodating the commercial nonagricultural activity and does not incorporate excess space; and

(d) the location, design, and aesthetic attributes, or any combination thereof, of the structural improvement represent, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the commercial nonagricultural activity, the public interest of preserving the natural and unadulterated appearance of the landscape;

(8) the footprint of the commercial nonagricultural activity, in the aggregate, does not exceed the footprint of structures existing on the bill's enactment date utilized for the commercial nonagricultural activity except as permitted otherwise pursuant to (7) above;

(9) the commercial nonagricultural activity does not interfere with the use of the land for agricultural production;

(10) the commercial nonagricultural activity utilizes the land in its existing condition except as allowed otherwise pursuant to paragraph (7) above;

(11) the commercial nonagricultural activity does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area; and

(12) any necessary local zoning and land use approvals and any other applicable approvals that may be required by federal, State, or local law, rule, regulation, or ordinance are obtained for the commercial nonagricultural activity.

The committee substitute also provides that, in addition to those factors enumerated above, the SADC, in evaluating an application for a special permit, must also consider such additional factors as traffic generated and the number of employees required by the proposed commercial nonagricultural activity so as to limit to the maximum extent possible the intensity of the activity and its impact on the land and the surrounding area.

Finally, the committee substitute provides for a nonrefundable \$1,000 permit application fee and requires that all proceeds therefrom be dedicated for use for farmland preservation purposes.

As reported by the committee, this committee substitute is identical to Senate Bill No. 206 SCS (1R) of 2004.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 559**

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 5, 2006

The Assembly State Government Committee reports favorably and with committee amendments Assembly, No. 559 ACS.

This bill, as amended by the committee, would allow certain farms preserved under various farmland preservation programs and meeting certain strict qualifying criteria and conditions to be able to apply for and perhaps obtain a permit of limited duration (up to 20 years) to allow a commercial nonagricultural activity or a personal wireless service facility (i.e., a cellular telephone tower) to occur or to be placed on the land. The issuance of these permits would be either at the sole discretion of the State Agriculture Development Committee (SADC), or in those cases when the development easement is owned by a county agriculture development board or a nonprofit organization, at the joint discretion of the SADC and the county agriculture development board or nonprofit organization, as appropriate.

By allowing a commercial nonagricultural activity to occur in certain limited instances on preserved farmland, it is the bill sponsors' and the committee's opinion that the bill as amended corrects an inequity, detailed further below, encountered by some farmers who have chosen to preserve their farms. It is also the bill sponsors' and the committee's opinion that the accommodation to allow cell towers on preserved farmland in certain limited instances and where appropriate and necessary serves the public good by potentially improving cellular communications, especially when they are used for emergency purposes, while also providing needed income to often struggling farmers.

Under the bill as amended by the committee, the only type of preserved farm that could apply for a commercial nonagricultural activity permit would be a commercial farm that was preserved for farmland preservation purposes prior to the date of enactment of the bill and for which no portion of the farm was excluded in the deed of easement from preservation. The purpose of this provision is to rectify an inequity for those farmers who chose to participate earlier

in the history of the program but who did not realize the possibility or potential benefit of excluding a portion of the farm from preservation so that it could be later used for a commercial nonagricultural activity which could provide supplemental income to, among other things, help offset increasingly costly farming operations. Farmers entering preservation programs later in the process have learned since to omit portions of the property from preservation for just such a reason.

The bill as amended imposes a number of qualifying criteria and conditions on these farms and on the type of commercial nonagricultural activity which may be permitted. These criteria and conditions ensure that only small enterprises, such as bed and breakfasts, tractor repair shops, antique shops, the leasing of space to store equipment, etc., which meet local zoning requirements and which require only a few parking spaces could ever qualify.

It is the intent of the bill sponsors and of the committee that franchises, chain stores, and big box stores and businesses should not and cannot be permitted under this bill for a number of important public policy reasons, including obvious incompatibility with the rural character of the land and the adverse impacts that parking and traffic generated by those types of businesses would have on the land.

The bill as amended by the committee also addresses the issue of when and how the installation of cellular telephone towers may be allowed on any preserved farm in the State, regardless of when and how it was preserved. Again, the purpose of this provision is to allow a farmer to receive supplemental income for the de minimis use of a very small portion of the farm for this important and compatible public purpose, but only in accordance with strict qualifying criteria and conditions as set forth in the bill as amended.

In addition, the bill as amended requires the SADC to prepare a report every two years on the implementation of this bill. The report must include a survey and inventory of all commercial nonagricultural activities occurring on, and of all personal wireless service facilities placed on, preserved farmland in accordance with the bill; the extent to which existing structures, such as barns, sheds, and silos, are used for those purposes, and how those structures have been modified therefor; the extent to which new structures, instead of existing structures, have been erected to host personal wireless service facilities and the number and type of new structures used to disguise those facilities, such as artificial trees and faux barns, sheds, and silos; and such other information as the SADC deems useful.

It is also the intent of the bill sponsors and of the committee that, in implementing this bill, the SADC shall ensure that: (1) existing structures, such as barns, sheds, and silos, are used in all cases for the allowed commercial nonagricultural activities and as much as possible for cell towers; (2) new structures would be allowed to be erected to accommodate cell towers only as a last resort; (3) any allowed modification of existing structures for either purpose is sensitive to the historic and aesthetic values and character of agricultural structures;

(4) erection of new structures to accommodate cell towers would be equally sensitive to such values and character; (5) cell towers are disguised as much as possible in the form of agricultural or natural looking structures or features; and (6) viewsheds are preserved to the greatest extent possible.

As amended and reported by the committee, this bill is identical to Senate, No. 206 SCS (1R) as also amended and reported by the committee.

COMMITTEE AMENDMENTS

The committee amendments:

(1) restructure the bill into two separate sections pertaining respectively to commercial nonagricultural activities and cell towers, and a third section which applies to both types of uses;

(2) add to and modify various criteria and conditions prescribed in the bill which must be met before a permit may be issued for a commercial nonagricultural activity or a cell tower on a preserved farm;

(3) add definitions of key terms used in the bill; and

(4) add a reporting requirement for the State Agriculture Development Committee regarding implementation of the bill.