



# **LEGISLATIVE HISTORY CHECKLIST**

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**LAWS OF:** 1998

**CHAPTER:**48

**NJSA:**4:1C-3

"Right to Farm -- amendments"

**BILL NO:** A2014 (Substituted for S1075)

**SPONSOR(S):** Gibson and Bateman

**DATE INTRODUCED:** May 7, 1998

**COMMITTEE:**

**ASSEMBLY:** Agriculture and Natural Resources

**SENATE:** ~~~~

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:**

**ASSEMBLY:** June 11, 1998

**SENATE:** June 22, 1998

**DATE OF APPROVAL:** July 2, 1998

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## **THE FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL:** 1<sup>st</sup> reprint

(Amendments during passage denoted by superscript numbers)

**A2014**

**SPONSORS STATEMENT:** *Yes* (Begins on page 9 of original bill)

**COMMITTEE STATEMENT:**

**ASSEMBLY:** *Yes*

**SENATE:** *No*

**FLOOR AMENDMENT STATEMENTS:** *No*

**LEGISLATIVE FISCAL ESTIMATE:** *No*

**S1075**

**SPONSORS STATEMENT:** *Yes* (Begins on page 9 of original bill)  
(Bill and Sponsors Statement identical to A2014)

**COMMITTEE STATEMENT:**

**ASSEMBLY:** *No*

**SENATE:** *Yes* (Identical to Assembly Statement for A2014)

**FLOOR AMENDMENT STATEMENTS:** *No*

**LEGISLATIVE FISCAL ESTIMATE:** *No*

**VETO MESSAGE:** *No*

**GOVERNOR'S PRESS RELEASE ON SIGNING:** *Yes*

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**THE FOLLOWING WERE PRINTED:**

*To check for circulating copies contact New Jersey State Government Publications at the State Library  
(609) 278-2640 ext. 102 or [refdesk@njstatelib.org](mailto:refdesk@njstatelib.org)*

**REPORTS:**

**974.90 A278 1996**

New Jersey. State Board of Agriculture.

**Right to Farm proposal.** April 23, 1996.

**J343.076 R571**

Adelaja, Adesoji and Horzepa, George.

New Jersey. Department of Agriculture.

**Right to Farm in New Jersey: a legal, institutional and social analysis report.**

New Brunswick, NJ. February 13, 1996.

**J343.076 R571a**

Adelaja, Adesoji.

New Jersey. Division of Rural Resources.

**Summary report on the Right to Farm in New Jersey: a legal, institutional and social analysis.**

New Brunswick, NJ. April 12, 1996.

**HEARINGS:** *No*

**NEWSPAPER ARTICLES:**

"Senate oks bill updating farm laws," 6-23-98, Atlantic City Press, p. A7.

"Whitman signs farm rights bill," 7-3-98, Trenton Times, p. A7.

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[First Reprint]

**ASSEMBLY, No. 2014**

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

INTRODUCED MAY 7, 1998

**Sponsored by:**

**Assemblyman JOHN C. GIBSON**

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

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Co-Sponsored by:**

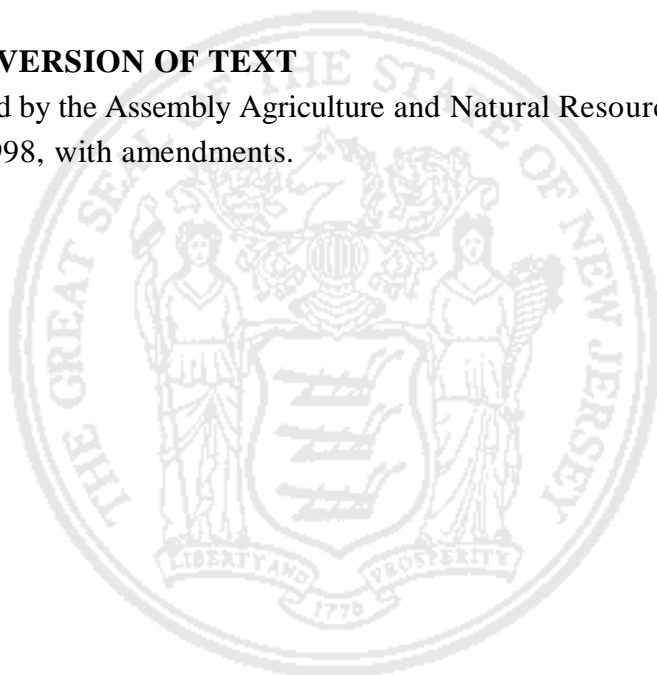
**Assemblymen Lance, Blee, Malone, Biondi, Gregg, Kelly, Assemblywoman  
Farragher, Assemblyman Garrett, Senators Singer, Zane and Schluter**

**SYNOPSIS**

Revises the "Right to Farm Act."

**CURRENT VERSION OF TEXT**

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



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

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

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

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

9 3. As used in this act:

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

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

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

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

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

- 1       2. Section 6 of P.L.1983, c.31 (C.4:1C-9) is amended to read as  
2 follows:
- 3       6. ~~【The】~~ Notwithstanding the provisions of any municipal or  
4 county <sup>1</sup>【law,】<sup>1</sup> ordinance <sup>1</sup>, resolution, <sup>1</sup> or regulation to the  
5 contrary, the owner or operator of a commercial farm, located in an  
6 area in which <sup>1</sup>, as of December 31, 1997 or thereafter, <sup>1</sup> agriculture is  
7 a permitted use under the municipal zoning ordinance <sup>1</sup>【in effect on  
8 December 31, 1997】 and is consistent with the municipal master plan<sup>1</sup>  
9 , or which commercial farm is in operation as of the effective date of  
10 P.L. , c. (C. ) (pending in the Legislature as this bill), 【which  
11 meets the eligibility criteria for differential property taxation pursuant  
12 to the "Farmland Assessment Act of 1964," P.L.1964, c.48  
13 (C.54:4-23.1 et seq.)】 and the operation of which conforms to  
14 agricultural management practices recommended by the committee and  
15 adopted pursuant to the provisions of the "Administrative Procedure  
16 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or whose specific  
17 operation or practice has been determined by the appropriate county  
18 board, or in a county where no county board exists, the committee, to  
19 constitute a generally accepted agricultural operation or practice, and  
20 all relevant federal or State statutes or rules and regulations adopted  
21 pursuant thereto, and which does not pose a direct threat to public  
22 health and safety may:
- 23       a. Produce agricultural and horticultural crops, trees and forest  
24 products, livestock, and poultry and other commodities as described  
25 in the Standard Industrial Classification for agriculture, forestry,  
26 fishing and trapping;
- 27       b. Process and package the agricultural output of the commercial  
28 farm;
- 29       c. Provide for the ~~【wholesale and retail marketing of the~~  
30 ~~agricultural output of the commercial farm, and related products that~~  
31 ~~contribute to farm income】~~ operation of a farm market, including the  
32 construction of building and parking areas in conformance with  
33 ~~【municipal】~~ <sup>1</sup>municipal<sup>1</sup> standards <sup>1</sup>~~【recommended by the State~~  
34 ~~Agriculture Development Committee and adopted pursuant to the~~  
35 ~~provisions of the "Administrative Procedure Act," P.L.1968, c.410~~  
36 ~~(C.52:14B-1 et seq.)】~~<sup>1</sup> ;
- 37       d. Replenish soil nutrients and improve soil tilth;
- 38       e. Control pests, predators and diseases of plants and animals;
- 39       f. Clear woodlands using open burning and other techniques, install  
40 and maintain vegetative and terrain alterations and other physical  
41 facilities for water and soil conservation and surface water control in  
42 wetland areas; ~~【and】~~
- 43       g. Conduct on-site disposal of organic agricultural wastes ;
- 44       h. Conduct <sup>1</sup>【agriculture related】 agriculture-related<sup>1</sup> educational  
45 and farm-based recreational activities provided that the activities are

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

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

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

8

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

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

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

11

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

20

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

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

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

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

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

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

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

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

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

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

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

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

# ASSEMBLY, No. 2014

## STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MAY 7, 1998

**Sponsored by:**

**Assemblyman JOHN C. GIBSON**

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

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Co-Sponsored by:**

**Assemblymen Lance, Blee, Malone, Biondi, Gregg, Kelly and  
Assemblywoman Farragher**

**SYNOPSIS**

Revises the "Right to Farm Act."

**CURRENT VERSION OF TEXT**

As introduced.



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

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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.

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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:

**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       6. **【The】** Notwithstanding the provisions of any municipal or  
2 county law, ordinance or regulation to the contrary, the owner or  
3 operator of a commercial farm ,located in an area in which agriculture  
4 is a permitted use under the municipal zoning ordinance in effect on  
5 December 31, 1997, or which commercial farm is in operation as of  
6 the effective date of P.L. , c. (C. ) (pending in the Legislature  
7 as this bill), 【which meets the eligibility criteria for differential  
8 property taxation pursuant to the "Farmland Assessment Act of 1964,"  
9 P.L.1964, c.48 (C.54:4-23.1 et seq.)】 and the operation of 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 may:
- 19       a. Produce agricultural and horticultural crops, trees and forest  
20 products, livestock, and poultry and other commodities as described  
21 in the Standard Industrial Classification for agriculture, forestry,  
22 fishing and trapping;
- 23       b. Process and package the agricultural output of the commercial  
24 farm;
- 25       c. Provide for the **【wholesale and retail marketing of the**  
26 **agricultural output of the commercial farm, and related products that**  
27 **contribute to farm income】** operation of a farm market , including the  
28 construction of building and parking areas in conformance with  
29 **【municipal】** standards recommended by the State Agriculture  
30 Development Committee and adopted pursuant to the provisions of the  
31 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
32 seq.);
- 33       d. Replenish soil nutrients and improve soil tilth;
- 34       e. Control pests, predators and diseases of plants and animals;
- 35       f. Clear woodlands using open burning and other techniques, install  
36 and maintain vegetative and terrain alterations and other physical  
37 facilities for water and soil conservation and surface water control in  
38 wetland areas; **【and】**
- 39       g. Conduct on-site disposal of organic agricultural wastes;
- 40       h. Conduct agriculture related educational and farm-based  
41 recreational activities provided that the activities are related to  
42 marketing the agricultural or horticultural output of the commercial  
43 farm; and
- 44       i. Engage in any other agricultural activity as determined by the  
45 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.  
10 (C. ) (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."

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 2014**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 4, 1998

The Assembly Agriculture and Natural Resources Committee reports favorably Assembly Bill No. 2014 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 Senate Bill No. 1075 (1R) of 1998.

**SENATE, No. 1075**

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

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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."

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.

# Office of the Governor

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## NEWS RELEASE

RELEASE: June 2, 1998

### **GOVERNOR SIGNS LEGISLATION STRENGTHENING LEGAL PROTECTIONS FOR FARMERS**

Emphasizing her commitment to maintaining farming as a viable industry in New Jersey, Gov. Christie Whitman today signed legislation strengthening the legal protections available to New Jersey farmers. The bill signing took place at the Myers Farm in Upper Deerfield Township.

"New Jersey farmland has always been my home, so I feel especially committed to maintaining agriculture as a way of life," the governor said. "In today's ever more competitive market place, it is essential that we help our farmers maintain the advantage that nature has afforded the Garden State."

The bill, A-2014, revises the state's Right to Farm Act to enhance protections to farmers performing recognized farming operations. The new law provides an irrebuttable presumption that no commercial agricultural operation, activity or structure conforming to standards established by the State Agricultural Development Committee (SADC) shall constitute a public or private nuisance. Under previous law, the presumption that agricultural operations could not constitute a public or private nuisance was rebuttable.

The new law allows farmers greater flexibility in managing their businesses by expanding the list of agricultural activity that are excluded from municipal regulation.

The bill establishes a procedure for the (SADC) to resolve complaints by persons aggrieved by the operation of a commercial farm. The bill also requires that state agencies issue an agricultural impact statement when proposing a new rule.

"This bill provides farmers with increased legal protection from unreasonable public and private nuisance suits, as long as the farmers use best management practices," Gov. Whitman said. "At a time when it is commonplace to see a new housing development next to a working farm, conflicts between neighbors are on the rise. Nuisance complaints can develop into costly court cases. This

legislation will protect our farmers from costly lawsuits -- and will have the added benefit of promoting intelligent planning."

The Governor noted that requiring state agencies to issue an agricultural impact statement when proposing a new rule will keep agricultural interests a top priority. "This makes good business sense for farmers and for New Jersey," she said. "In revising the Right to Farm Act, we are backing up our promise to support New Jersey's farmers, today, tomorrow, and into the future."

The legislation was sponsored by Assembly Members John C. Gibson (R-Cape May/Atlantic/Cumberland) and Christopher "Kip" Bateman (R-Morris/Somerset) and Senators Robert W. Singer (R-Burlington/Monmouth/Ocean) and Raymond J. Zane (D-Salem/Cumberland/Gloucester).