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States' Right-To-Farm Statutes

State of New Jersey

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States' Right-to-Farm Statutes

STATE OF NEW JERSEY

N.J. Stat. Ann. §§ 4:1C-1 to 4:1C-10.4

Current with laws effective through L.2016, c. 23 and J.R. No. 1.

4:1C-1. Short title

This act shall be known and may be cited as the “Right to Farm Act.”

4:1C-2. Legislative findings

The Legislature finds and declares that:

- a. The retention of agricultural activities would serve the best interest of all citizens of this State by insuring the numerous social, economic and environmental benefits which accrue from one of the largest industries in the Garden State;
- b. Several factors have combined to create a situation wherein the regulations of various State agencies and the ordinances of individual municipalities may unnecessarily constrain essential farm practices;
- c. It is necessary to establish a systematic and continuing effort to examine the effect of governmental regulation on the agricultural industry;
- d. All State departments and agencies thereof should encourage the maintenance of agricultural production and a positive agricultural business climate;
- e. It is the express intention of this act to establish as the policy of this State the protection of commercial farm operations from nuisance action, where recognized methods and techniques of agricultural production are applied, while, at the same time, acknowledging the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in New Jersey.

4:1C-3. Definitions

As used in this act:

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

“Commercial farm” means (1) a farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually, and

satisfying the eligibility criteria for differential property taxation pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c. 48 (C.54:4-23.1 et seq.), (2) a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c. 48 (C.54:4-23.1 et seq.), or (3) a farm management unit that is a beekeeping operation producing honey or other agricultural or horticultural apiary-related products, or providing crop pollination services, worth \$10,000 or more annually.

“Committee” means the State Agriculture Development Committee established pursuant to section 4 of P.L.1983, c. 31 (C.4:1C-4).

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

“Farm market” means 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.

4:1C-3.1. Farm management units performing apiary-related activities; eligibility for commercial farm protections under Right to Farm Act

Notwithstanding the provisions of section 3 of P.L.1983, c. 31 (C.4:1C-3), or any rules or regulations adopted pursuant thereto, to the contrary, a farm management unit that qualifies as a commercial farm for the purposes of the “Right to Farm Act,” P.L.1983, c. 31 (C.4:1C-1 et seq.), because it is a beekeeping operation producing honey or other agricultural or horticultural apiary-related products, or providing crop pollination services, worth \$10,000 or more annually, shall be entitled to the protections provided to any other commercial farm under that act but not for agricultural or horticultural activities that are not apiary-related activities, unless the farm management unit also qualifies as a commercial farm pursuant to section 3 of P.L.1983, c. 31 (C.4:1C-3) for reasons other than as a beekeeping operation as described in that section.

4:1C-4. State agriculture development committee; establishment; membership; terms; vacancies; compensation; meetings; minutes; staff

a. In order that the State's regulatory action with respect to agricultural activities may be undertaken with a more complete understanding of the needs and difficulties of

agriculture, there is established in the Executive Branch of the State Government a public body corporate and politic, with corporate succession, to be known as the State Agriculture Development Committee. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the committee is allocated within the Department of Agriculture, but, notwithstanding that allocation, the committee shall be independent of any supervision or control by the State Board of Agriculture, by the department or by the secretary or any officer or employee thereof, except as otherwise expressly provided in this act. The committee shall constitute an instrumentality of the State, exercising public and essential governmental functions, and the exercise by the committee of the powers conferred by this or any other act shall be held to be an essential governmental function of the State.

b. The committee shall consist of 11 members, five of whom shall be the Secretary of Agriculture, who shall serve as chairman, the Commissioner of Environmental Protection, the Commissioner of Community Affairs, the State Treasurer and the Dean of Cook College, Rutgers University, or their designees, who shall serve ex officio, and six citizens of the State, to be appointed by the Governor with the advice and consent of the Senate, four of whom shall be actively engaged in farming, the majority of whom shall own a portion of the land that they farm, and two of whom shall represent the general public. With respect to the members actively engaged in farming, the State Board of Agriculture shall recommend to the Governor a list of potential candidates and their alternates to be considered for each appointment.

c. Of the six members first to be appointed, two shall be appointed for terms of 2 years, two for terms of 3 years and two for terms of 4 years. Thereafter, all appointments shall be made for terms of 4 years. Each of these members shall hold office for the term of the appointment and until a successor shall have been appointed and qualified. A member shall be eligible for reappointment for no more than two consecutive terms. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

d. Members of the committee shall receive no compensation but the appointed members may, subject to the limits of funds appropriated or otherwise made available for these purposes, be reimbursed for expenses actually incurred in attending meetings of the committee and in performance of their duties as members thereof.

e. The committee shall meet at the call of the chairman as soon as may be practicable following appointment of its members and shall establish procedures for the conduct of regular and special meetings, including procedures for the notification of departments of State regulating the activities of commercial agriculture, provided that all meetings are conducted in accordance with the provisions of the "Open Public Meetings Act," P.L. 1975, c. 231 (C. 10:4-6 et seq.).

f. A true copy of the minutes of every meeting of the committee shall be prepared and forthwith delivered to the Governor. No action taken at such meeting by the commission shall have force or effect until 15 days, exclusive of Saturdays, Sundays

and public holidays, after such copy of the minutes shall have been so delivered. If, in said 15-day period, the Governor returns such copy of the minutes with a veto of any action taken by the commission at such meeting, such action shall be null and void and of no force and effect.

g. The department shall provide any personnel that may be required as staff for the committee.

4:1C-5. Powers of committee

The committee may:

- a. Adopt bylaws for the regulation of its affairs and the conduct of its business;
- b. Adopt and use a seal and alter the same at its pleasure;
- c. Sue and be sued;
- d. Apply for, receive, and accept from any federal, State, or other public or private source, grants or loans for, or in aid of, the committee's authorized purposes;
- e. Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or desirable for the purposes of the committee or to carry out any power expressly given in this act;
- f. Adopt, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this act;
- g. Request assistance and avail itself of the services of the employees of any State, county or municipal department, board, commission or agency as may be made available for these purposes.

4:1C-6. Duties of committee

The committee shall:

- a. Consider any matter relating to the improvement of farm management practices;
- b. Review and evaluate the proposed rules, regulations and guidelines of any State agency in terms of feasibility, effect and conformance with the intentions and provisions of this act;
- c. Study, develop and recommend to the appropriate State departments and agencies thereof a program of agricultural management practices which shall include, but not necessarily be limited to, air and water quality control, noise control, pesticide control, fertilizer application, integrated pest management, and labor practices;

d. Upon a finding of conflict between the regulatory practices of any State instrumentality and the agricultural management practices recommended by the committee, commence a period of negotiation not to exceed 120 days with the State instrumentality in an effort to reach a resolution of the conflict, during which period the State instrumentality shall inform the committee of the reasons for accepting, conditionally accepting or rejecting the committee's recommendations and submit a schedule for implementing all or a portion of the committee's recommendations.

e. Within 1 year of the effective date of this act and at least annually thereafter, recommend to the Governor, the Legislature and the appropriate State departments and agencies thereof any actions which should be taken that recognize the need to provide a proper balance among the varied and sometimes conflicting interests of all lawful activities in the State, minimize unnecessary constraints on essential agricultural activities, and are consistent with the promotion of the public health, safety and welfare.

4:1C-7. Additional duties of committee

The committee shall:

a. Establish guidelines and adopt criteria for identification of agricultural lands suitable for inclusion in agricultural development areas and farmland preservation programs to be developed and adopted by a board applying for moneys from the fund;

b. Certify to the secretary that the board has approved the agricultural development area and the farmland preservation program within the area where matching grants from the fund shall be expended;

c. Review State programs and plans and any other public or private action which would adversely affect the continuation of agriculture as a viable use of the land in agricultural development areas and recommend any administrative action, executive orders or legislative remedies which may be appropriate to lessen these adverse effects;

d. Study, develop and recommend to the departments and agencies of State government a program of recommended agricultural management practices appropriate to agricultural development areas, municipally approved programs (provided that these practices shall not be more restrictive than for those areas not included within municipally approved programs) and other farmland preservation programs, which program shall include but not necessarily be limited to: air and water quality control; noise control; pesticide control; fertilizer application; soil and water management practices; integrated pest management; and labor practices;

e. Review and approve, conditionally approve or disapprove all applications for funds pursuant to the provisions of this act; and

f. Generally act as an advocate for and promote the interests of productive agriculture

and farmland retention within the administrative processes of State government.

4:1C-8. Appropriated moneys; use by secretary

The secretary shall use the sum of money appropriated by section 31 of this act, and any other sums as may be appropriated from time to time for like purposes, to assist the committee in administering the provisions of this act to make grants to assist boards or any other local units as authorized herein, to acquire development easements, to purchase fee simple absolute titles to farmland for resale with agricultural deed restrictions for farmland preservation purposes, and to make grants to landowners to fund soil and water conservation projects, on land devoted to farmland preservation programs within duly certified agricultural development areas. With respect to moneys to be utilized to make grants for soil and water conservation projects, the secretary shall not approve any grant unless it shall be for a project which is also part of a farm conservation plan approved by the local soil conservation district.

4:1C-9. Commercial farm owners and operators; permissible activities

Notwithstanding the provisions of any municipal or county ordinance, resolution, or regulation to the contrary, the owner or operator of a commercial farm, located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm is in operation as of the effective date of P.L.1998, c. 48 (C.4:1C-10.1 et al.), and the operation of which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), or whose specific operation or practice has been determined by the appropriate county board, or in a county where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety may:

- a. Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping or, after the operative date of the regulations adopted pursuant to section 5 of P.L.2003, c. 157 (C.4:1C-9.1), included under the corresponding classification under the North American Industry Classification System;
- b. Process and package the agricultural output of the commercial farm;
- c. Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards;
- d. Replenish soil nutrients and improve soil tilth;
- e. Control pests, predators and diseases of plants and animals;

- f. Clear woodlands using open burning and other techniques, install and maintain vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas;
- g. Conduct on-site disposal of organic agricultural wastes;
- h. Conduct 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;
- i. Engage in the generation of power or heat from biomass, solar, or wind energy, provided that the energy generation is consistent with the provisions of P.L.2009, c. 213 (C.4:1C-32.4 et al.), as applicable, and the rules and regulations adopted therefor and pursuant to section 3 of P.L.2009, c. 213 (C.4:1C-9.2); and
- j. Engage in any other agricultural activity as determined by the State Agriculture Development Committee and adopted by rule or regulation pursuant to the provisions of the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.).

4:1C-9.1. Rules and regulations

- a. The State Agriculture Development Committee, in consultation with the Department of Labor, shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations determining the classification for agriculture, forestry, fishing, and trapping under the North American Industry Classification System of codes, and for the production of agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities that are described in the Standard Industrial Classification codes for agriculture, forestry, fishing and trapping, for the purposes of compliance with P.L.1983, c. 31 (C.4:1C-1 et seq.). The State Agriculture Development Committee shall ensure that the provisions of P.L.1983, c. 31 (C.4:1C-1 et seq.) shall continue to apply to any owner or operator of a commercial farm, or other person, to whom the provisions applied prior to the effective date of P.L.2003, c. 157 (C.13:1D-138 et al.)
- b. Notwithstanding the provisions of the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.) to the contrary, the State Agriculture Development Committee may, immediately upon filing the regulations with the Office of Administrative Law, adopt such temporary regulations as the committee determines necessary to implement the provisions of P.L.2003, c. 157 (C.13:1D-138 et al.). The regulations shall be in effect for a period not to exceed 270 days after the date of filing, except that in no case shall the regulations be in effect one year after the effective date of P.L.2003, c. 157 (C.13:1D-138 et al.). The regulations may thereafter be amended, adopted or readopted as the committee determines necessary in accordance with the “Administrative Procedure Act”.

4:1C-9.2. Rules and regulations relative to agricultural management practices for biomass, solar or wind energy generation

a. The committee shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.):

(1) such rules and regulations as may be necessary for the implementation of subsection i. of section 6 of P.L.1983, c. 31 (C.4:1C-9); and

(2) agricultural management practices for biomass energy generation on commercial farms, including, but not necessarily limited to, standards for the management of odor, dust, and noise.

b. The Board of Public Utilities shall provide technical assistance and support to the State Agriculture Development Committee with regard to the committee’s responsibilities in connection with this section and subsection i. of section 6 of P.L.1983, c. 31 (C.4:1C-9).

c. Notwithstanding any provision of this section or subsection i. of section 6 of P.L.1983, c. 31 (C.4:1C-9) to the contrary, the construction, installation, or operation of any biomass, solar, or wind energy generation facility, structure, or equipment in the pinelands area, as defined and regulated by the “Pinelands Protection Act,” P.L.1979, c. 111 (C.13:18A-1 et seq.), shall comply with the standards of P.L.1979, c. 111 and the comprehensive management plan for the pinelands area adopted pursuant to P.L. 1979, c. 111.

d. For the purposes of this section and subsection i. of section 6 of P.L. 1983, c. 31 (C.4:1C-9), “biomass” means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the commercial farm and which can be used to generate energy in a sustainable manner.

4:1C-10. Commercial agricultural operation, activity or structure; presumption

In all relevant actions filed subsequent to the effective date of P.L.1998, c. 48 (C.4:1C-10.1 et al.), there shall exist an irrebuttable presumption that no commercial agricultural operation, activity or structure which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), or whose specific operation or practice has been determined by the appropriate county board, or in a county where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto and which does not pose a direct threat to public health and safety, shall constitute a public or private nuisance, nor shall any such operation, activity or structure be deemed to otherwise invade or interfere with the use and enjoyment of any other land or property.

4:1C-10.1. Complaints against commercial farms

a. Any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable county agriculture development board or the State Agriculture Development Committee in counties where no county board exists prior to filing an action in court.

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

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

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

e. The decision of the State Agriculture Development Committee shall be binding, subject to the right of appeal to the Appellate Division of the Superior Court. Any decision of a county agriculture development board that is not appealed shall be binding.

4:1C-10.2. Appeal of county board decisions to the State Agriculture Development Committee

Any person aggrieved by any decision of a county board regarding specific agricultural management practices or conflict resolution, may appeal the decision to the State Agriculture Development Committee in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.). The decision of the State Agriculture Development Committee shall be considered a final administrative agency decision.

4:1C-10.3. Agriculture industry impact statements; issuance; contents

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

b. During the public comment period on the proposed rule, the State Agriculture Development Committee shall review the rule proposal to determine its impact on the agriculture industry of the State.

c. If the State Agriculture Development Committee determines that the proposed rule may have a significant adverse impact on the agricultural industry of the State and notifies the relevant agency of that determination during the public comment period on the proposed rule, the agency shall consult with the State Agriculture Development Committee prior to the adoption of the rule.

4:1C-10.4. Adoption of State Agriculture Development Committee standards; direct threat to public health and safety

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

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

c. The State Agriculture Development Committee shall adopt, pursuant to the provisions of the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of P.L.1998, c. 48 (C.4:1C-10.1 et al.) and P.L.1983, c. 31 (C.4:1C-1 et al.).