

SENATE BILL NO. 757
(Second Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 757 (Second Reprint) with my recommendations for reconsideration.

This bill would authorize commercial farms located on preserved farmland that produce agricultural or horticultural products worth \$10,000 or more annually to hold special occasion events ("SOEs"), subject to certain conditions. The bill was developed following the implementation of P.L.2014, c.16, which allowed wineries to conduct SOEs on preserved farmland under certain conditions as part of a 44-month pilot program. Following the pilot program's expiration on March 1, 2018, the pilot was extended for an additional two years, providing ample time to review implementation and operation of the pilot.

In accordance with the requirements of the pilot program, the State Agriculture Development Committee ("SADC") issued a Final Report evaluating the pilot in March 2020. The SADC recommended that several protections be incorporated into any legislation permanently authorizing SOEs to ensure that the increased agritourism opportunities associated with SOEs do not displace agricultural production as the first priority use of preserved farmland, or disrupt neighborhoods that surround preserved farms. Many of the recommendations contained in the report, including expanding the pilot to all preserved farms and limiting the size, scope, and frequency of SOEs, have been incorporated into this bill.

I commend the bill's sponsors for their efforts to allow farms located on preserved farmland to host SOEs. SOEs give farmers, preserved farmland owners, and communities the opportunity to introduce new streams of income to family farming operations and increase the enjoyments offered to the public by agritourism. I thus

fully support making the contours of the pilot program permanent and expanding it beyond just wineries located on preserved farmland.

However, I am concerned that the bill does not go far enough in ensuring that SOEs will not interfere with the use of preserved farmland. Under New Jersey's Farmland Preservation Program ("FPP"), landowners who want to permanently protect their land can sell "development easements," or their rights to develop and use their land for anything other than agriculture, to the SADC, counties, municipalities, or nonprofit organizations. The restriction on development remains in force for any future owners, thereby permanently protecting the land for agricultural use.

New Jersey's FPP has resulted in the permanent protection of over 2,800 farms, accounting for more than 247,000 acres, or roughly one-third of all farmland in the State, and has facilitated a larger financial investment in farmland protection than any other state farmland protection program in the country. However, while New Jersey earns the top rank for protecting its farmland, it also ranks third among states with the most threatened agricultural land, evidencing the continued need for a strong FPP.

The State must be careful to allow permitting SOEs as a way to supplement farm income while preventing the emergence of primarily nonagricultural enterprises on farms. To better achieve this balance, my recommended revisions specify that an SOE may not interfere with the use of the preserved farmland for agricultural or horticultural production. Similarly, I am recommending language authorizing an SOE only if a host farm continues to comply with the terms of the FPP development easement recorded against it. To ensure that agriculture or horticulture remains the first priority use of the farmland, I also recommend adding a restriction prohibiting a permanent structure constructed fewer than five years prior to the date of the SOE application from being used for the purpose of holding an SOE. My recommendations also enhance the SOE application process, including

requiring that any denial of an application be accompanied by an explanation of the reason for the denial and an opportunity for the applicant to submit an amended application.

Finally, my recommendations clarify that the bill's provisions do not apply to "exception areas" - portions of preserved farms that were excluded from the preservation program in order for landowners to retain flexibility for nonagricultural uses in the future. Limiting SOEs in these areas is inconsistent with the longstanding purpose of allowing exception areas and runs counter to the bill's goal of promoting agritourism Statewide.

With these revisions, I am confident that farms will have the flexibility they need to pursue these important agritourism opportunities in a manner that is consistent with the State's FPP.

Therefore, I herewith return Senate Bill No. 757 (Second Reprint) and recommend that it be amended as follows:

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| <u>Page 8, Section 1, Line 9:</u> | Delete "2,700" and insert "2,800" |
| <u>Page 8, Section 1, Line 9:</u> | Delete "241,000" and insert "247,000" |
| <u>Page 8, Section 1, Line 15:</u> | Delete "attractive business in" and insert "viable industry within" |
| <u>Page 8, Section 1, Lines 16-19:</u> | Delete in their entirety |
| <u>Page 8, Section 1, Line 20:</u> | Delete "d." and insert "c." |
| <u>Page 8, Section 1, Line 23:</u> | Delete "e." and insert "d." |
| <u>Page 8, Section 1, Line 28:</u> | Delete "f." and insert "e." |
| <u>Page 8, Section 2, Line 36:</u> | After "bill):" insert "'Applicant' means the owner, and in cases where the owner is not also the operator of the farm and the operator is the person seeking to hold the special occasion event, then the operator of the commercial farm who applies pursuant to subsection c. of section 3 of this act for approval to hold a special occasion event." |
| <u>Page 8, Section 2, Line 44:</u> | After "plan" insert "or a forest stewardship plan" |
| <u>Page 9, Section 2, Line 4:</u> | Delete "a commercial farm that," and insert "the applicant's landholdings that is excluded" |

from the premises and, although identified in the deed of easement, is unencumbered by the farmland preservation deed restrictions set forth in the deed of easement."

Page 9, Section 2, Lines 5-8:

Delete in their entirety

Page 9, Section 2, Line 26:

After "structure." insert "'Owner' means the record owner of the preserved farmland.

'Permittee' means the owner, and if applicable, the operator of the commercial farm to whom permission to hold special occasion events has been issued by the grantee."

Page 10, Section 2, Line 2:

Delete "landowner" and insert "owner"

Page 10, Section 2, Line 4:

Delete "landowner" and insert "owner"

Page 10, Section 3, Line 13:

After "the" insert "grantee determines the preserved farm complies with the terms of the Farmland Preservation Program deed of easement recorded against the preserved farmland, the"

Page 10, Section 3, Line 32:

Delete "be designed to" and insert "not interfere with the use of the preserved farmland for agricultural or horticultural production. The special occasion event shall have minimal effects on the occupied area and shall be designed to protect the agricultural resources of the land and"

Page 10, Section 3, Line 44:

After "may" insert "require that an owner or operator of a commercial farm located on preserved farmland submit an application to the municipality for approval and may"

Page 10, Section 3, Line 45:

After "review" insert "municipal"

Page 10, Section 3, Line 46:

Delete "an" and insert "a municipal"

Page 11, Section 3, Line 8:

Delete "an" and insert "a municipal"

Page 11, Section 3, Line 10:

After "The" insert "municipal"

Page 11, Section 3, Line 12:

After "structures" insert ", sanitary facilities, parking, and access and egress"

Page 11, Section 3, Line 21:

After "safety." insert "(b) No permanent structure constructed

fewer than five years prior to the date of application to the grantee to hold a special occasion event pursuant to subsection c. of this section shall be used for the purpose of holding the special occasion event."

Page 11, Section 3, Line 22:

Delete "(b)" and insert "(c)"

Page 11, Section 3, Line 35:

Delete "(c)" and insert "(d)"

Page 12, Section 3, Lines 8-9:

Delete "owner and operator of the commercial farm" and insert "applicant"

Page 12, Section 3, Lines 10-11:

Delete "An owner or operator shall only" and insert "If the applicant is the operator, but not the owner, of the farm, then the operator shall submit to the grantee a notarized affidavit from the owner authorizing the application. Once approval is obtained from the grantee, a permittee shall"

Page 12, Section 3, Line 12:

After "subsection" insert "not more than"

Page 12, Section 3, Line 12:

After "once" insert "annually"

Page 12, Section 3, Line 13:

Delete "The application" and insert "(1) A grantee whose approval is required for a special occasion event to be held on preserved farmland shall develop an application process by which an owner or operator of a commercial farm located on preserved farmland may apply for approval. The application shall, at a minimum, allow the grantee to determine:

- (a) that the commercial farm located on the preserved farmland produces agricultural or horticultural products worth \$10,000 or more annually, and this may include an attestation that the commercial farm located on the preserved farmland produces agricultural or horticultural products worth \$10,000 or more annually;
- (b) the number of special occasion events to be held on the commercial farm during the calendar year;
- (c) the maximum attendance of the special occasion events;
- (d) the acreage of the occupied area, as delineated on a

map or aerial photograph, to be used for the special occasion event; and

- (e) whether the farm is in compliance with its farmland preservation deed of easement.

(2) The grantee shall approve an application made pursuant to this section upon a finding that the special occasion events on the preserved farmland that are the subject of the application comply with the requirements of this act and any rules and regulations adopted by the committee to implement this act. The Grantee shall forward a copy of its approval to the committee and to the board in the county in which the preserved farmland is located.

- (a) If the grantee is a qualifying tax exempt nonprofit organization as defined pursuant to P.L.1999, c.152 (C.13:8C-3), the grantee may approve, approve with conditions, or deny the application submitted pursuant to this section."

Page 12, Section 3, Lines 14-16:

Delete in their entirety

Page 12, Section 3, Line 17:

Delete "number of expected guests." and insert "(b)"

Page 12, Section 3, Line 20:

Delete "If the owner or operator of the commercial farm" and insert "(c) If the grantee denies an application made pursuant to this section, the grantee shall provide a reason for the denial and an opportunity for the applicant to reapply with an amended application.

(3) An applicant shall annually certify to the grantee in a form and manner to be prescribed by the grantee, information about the special occasion events held in the prior calendar year that were approved pursuant to this section, including, but not limited to, the date, occasion, and approximate number of attendees of each event. The grantee shall forward a copy of the certification to the committee."

Page 12, Section 3, Lines 21-25:

Delete in their entirety

Page 13, Section 3, Line 8:

After "the" insert "permittee does not charge for, and

receives no fees or compensation for hosting the event, other than for reimbursement of out-of-pocket expenses. The"

- Page 13, Section 3, Line 9: Delete "owner or operator of the commercial farm does" and insert "permittee shall"
- Page 13, Section 3, Lines 16-17: Delete "a special occasion event held by a winery or to"
- Page 13, Section 3, Line 24: After "farm" and insert ", including, but not limited to, exception areas"
- Page 13, Section 3, Lines 25-38: Delete in their entirety
- Page 13, Section 4, Line 40: Delete "board" and insert "grantee and the committee"
- Page 13, Section 4, Line 46: Delete "An owner or operator of a commercial farm" and insert "A permittee"
- Page 14, Section 4, Line 3: Delete "unless one or more" and insert "without good cause demonstrated by the grantee or committee."
- Page 14, Section 4, Lines 4-7: Delete in their entirety
- Page 14, Section 5, Line 9: Delete "If a grantee, a board, or the committee determines that an" and insert "A permittee who violates the provisions of this act shall be liable to a civil administrative penalty of up to \$1,000 for the first offense, up to \$2,500 for the second offense, or up to \$5,000 for a third and subsequent offense. Each day in which a violation occurs shall be considered a separate offense."
- Page 14, Section 5, Lines 10-40: Delete in their entirety
- Page 14, Section 5, Line 42: Delete ", the board shall authorize a municipality to"
- Page 14, Section 5, Line 43: After "offense," insert "the committee shall"
- Page 14, Section 5, Lines 43-44: Delete "owner or operator of the commercial farm" and insert "permittee"
- Page 15, Section 5, Line 1: After "offense," insert "the committee shall"
- Page 15, Section 5, Lines 1-2: Delete "owner or operator of the commercial farm" and insert "permittee"
- Page 15, Section 5, Line 4: After "offense," insert "the committee shall"

Page 15, Section 5, Line 5:

Delete "owner or operator of the commercial farm" and insert "permittee"

Page 15, Section 5, Line 9:

After "c." insert "No civil administrative penalty pursuant to subsection a. of this section or penalty established in subsection b. of this section shall be imposed pursuant to this section until after the permittee has been notified of the alleged violation by certified mail or personal service. The notice shall include:

(1) a reference to the section of the statute, regulation, order, or condition alleged to have been violated;

(2) a concise statement of the facts alleged to constitute a violation;

(3) a statement of the amount of the civil administrative penalty that may be imposed and the duration of the suspension that may be imposed, if any; and

(4) a statement of the right of the permittee to a hearing.

d. The permittee served with notice pursuant to subsection c. of this section shall have 20 days after the receipt of the notice to request in writing a hearing before the committee. The committee may retain the matter for a hearing before the committee or transmit the matter to the Office of Administrative Law in accordance with the provisions of the 'Administrative Procedure Act', P.L.1968, c.410 (C.52:14B-1 et seq.).

(1) If the hearing is conducted by the committee, the hearing shall be conducted in accordance with relevant provisions of the "Administrative Procedure Act", P.L. 1968, c. 410 (C.52:14B-1 et seq.) and regulations adopted pursuant thereto, and shall provide opportunity for testimony from the municipality in which the preserved farmland is located. After the hearing, if the committee finds that a violation has occurred, the committee may issue a final order assessing the amount of the civil administrative penalty set forth in the notice and imposing the suspension, if any.

(2) If no hearing is requested, then the notice shall become a final order 20 days after the date upon which the notice was served. Payment of the civil administrative penalty shall be due, and duration of the suspension, if any, shall begin, on the date when a final order is issued or the notice becomes a final order.

Page 15, Section 5, Lines 41-46:

Delete in their entirety and insert "e. The committee shall notify, in writing, the grantee and the board in the county in which the preserved farmland is location when it suspends a permittee from holding special occasion events pursuant to subsection b. of this section."

Page 16, Section 5, Lines 1-2:

Delete in their entirety

Page 16, Section 6, Line 4:

After "6." insert "Notwithstanding the provisions of the 'Administrative Procedure Act,' P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the committee may adopt, immediately upon filing with the Office of Administrative Law, such regulations as the committee deems necessary to implement the applicable provisions of this act, which shall be effective for a period not to exceed 12 months."

Page 16, Section 6, Line 4:

After "shall" insert "thereafter"

Page 16, Section 6, Line 11:

Delete "be no more restrictive than as specifically provided for in"

Page 16, Section 6, Line 12:

Delete in its entirety

Page 16, Section 6, Line 13:

Delete "and shall"

Page 16, Section 6, Line 14:

Delete "may be" and insert "feasible and which are"

Page 16, Section 6, Line 15:

After "bill)." insert "A grantee may accept applications pursuant to this act and approve applications for special occasion events that comply with the provisions of this act prior to the adoption of the rules required under this section. Upon adoption of rules and regulations pursuant to this section, all approvals pursuant to this act shall comply with the rules and regulations adopted by the committee."

Page 16, Section 7, Line 20: Delete "A board may" and insert "All grantees shall"

Page 16, Section 7, Line 30: Delete "board" and insert "grantee"

Page 17, Section 8, Line 16: Delete "With the exception of the application of this act to a" and insert "This act shall take effect immediately, except the authority of a municipality to require an application by a winery pursuant to paragraph (4) of subsection b. of section 3 of this act shall take effect on January 1, 2023."

Page 17, Section 8, Lines 17-27: Delete in their entirety

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Kate McDonnell

Senior Deputy Chief Counsel to the Governor