

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 3838

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2021

The Senate Economic Growth Committee reports favorably Senate Bill No. 3838.

As reported, bill would strengthen the legal protections provided to farmers under the “Right to Farm Act.” Specifically, the bill would allow farmers to recover reasonable costs and attorney fees incurred in the defense of bad faith complaints against commercial agricultural operations, activities or structures when a county agriculture development board or the State Agriculture Development Committee (SADC), as applicable:

- 1) finds the farmer is entitled to the irrebuttable presumption established under the “Right to Farm Act”; and

- 2) determines, supported by a preponderance of the evidence, that the complaint was brought in bad faith and all or a portion of the costs and attorney fees are reasonable.

Under the “Right to Farm Act,” the established irrebuttable presumption is that a commercial agricultural operation, activity or structure or specific operation or practice does not constitute a public or private nuisance, or does not otherwise invade or interfere with the use and enjoyment of any other land or property, if:

- 1) the commercial agricultural operation, activity or structure conforms to agricultural management practices recommended and adopted by the SADC, or the specific operation or practice of the commercial agricultural operation has been determined to constitute a generally accepted agricultural operation or practice, either by the appropriate county agriculture development board or the SADC, as applicable; and

- 2) the commercial agricultural operation, activity or structure or specific operation or practice complies with all relevant federal and State statutes and regulations, and does not pose a direct threat to public health and safety.

Under the bill, a farmer seeking an award of reasonable costs and attorney fees would submit an application therefor to the county agriculture development board or the SADC as applicable, after being found entitled to the irrebuttable presumption. The county agriculture development board or the SADC would then determine, whether a preponderance of the evidence supports a determination that the complaint was made in bad faith and if the costs and fees, or a portion thereof, are reasonable. If so, the county agriculture development

board or the SADC would issue an order for the person filing the complaint to pay the reasonable costs and fees to the farmer.

As reported, Senate Bill No. 3838 is identical to Assembly Bill No. 3618, which was also reported by the committee on this date.