Memo

To: Municipal and County Farmland Preservation Program Administrators
   Municipal Agriculture Advisory Committee Members
   County Agriculture Development Board Members
   Non-Profit Preservation Partners

From: Susan E. Payne, Executive Director

Date: 4/5/2021

Re: Right to Farm Act Amendment P.L.2020, c.154. - housing of equine-related farm employees in facilities with horses under certain conditions as "Right to Farm" permissible activity

P.L.2020 c.154 recently amended the Right to Farm Act (RTFA) and extends Right to Farm (RTF) eligibility to year-round, full-time agricultural, equine laborers. We have attached a copy of the new law.

Please note this new legislation extends RTF protection eligibility to the housing of “full-time, year-round equine-related farm employees in the same building or facility as horses.” The law explicitly excludes eligibility for the housing of migrant or seasonal employees/workers. This bill is significant because, for the first time, the housing of "agricultural laborers" will be eligible for RTF protection.

The law directs the SADC to adopt implementing regulations but does not set a deadline. The SADC has added the development of a corresponding Agricultural Management Practice (AMP) to our work calendar; however, this will take some time.

To avoid a lack of service to the equine community before the AMP adoption, the SADC sought advice from the Office of the Attorney General (OAG) regarding the ability of County Agriculture Development Boards (CABDs) to hear and process RTF complaints or Site Specific Agricultural Management Practice (SSAMP) requests under the new law prior to SADC’s adoption of a new AMP. Based on the advice received, the SADC has determined that CABDs can now accept RTF cases enabled by the new law’s provisions because the law is very detailed, and the new legislation has not disturbed the existing RTF procedures for issuing an SSAMP wherein CABDs can hear and decide matters that are not the subject of adopted AMPs.

If you have any questions regarding this issue, please contact Alison Reynolds, Legal Specialist at alison.reynolds@ag.nj.gov.
[First Reprint]
SENATE, No. 1245

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)
Senator NILSA I. CRUZ-PEREZ
District 5 (Camden and Gloucester)
Assemblyman ERIC HOUGHTALING
District 11 (Monmouth)
Assemblywoman CAROL A. MURPHY
District 7 (Burlington)
Assemblyman RONALD S. DANCER
District 12 (Burlington, Middlesex, Monmouth and Ocean)

Co-Sponsored by:
Assemblywomen Swain and Downey

SYNOPSIS
Establishes housing of equine-related farm employees in facilities with horses under certain conditions as “Right to Farm” permissible activity; requires State Agriculture Development Committee adoption of agricultural management practice that permits such housing.

CURRENT VERSION OF TEXT
As reported by the Senate Economic Growth Committee on June 25, 2020, with amendments.

(Sponsorship Updated As Of: 11/16/2020)
AN ACT concerning housing equine-related farm employees in
certain farm buildings and related agricultural management

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

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

2. As used in "this act" P.L.1983, c.31 (C.4:1C-1 et seq.) 1:

"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).

"Equine-related farm employee" means any person employed
by the owner or operator of a commercial farm to provide proper
care and ensure the safety of horses on the commercial farm,
including, but not limited to, a groom or other employee working in
a stable. 1

"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

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:
Senate SEG committee amendments adopted June 25, 2020.
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.

1"Full-time, year-round equine-related farm employee" means
any person employed by the owner or operator of a commercial
farm on a full-time, year-round basis to provide proper care and
ensure the safety of horses on the commercial farm, including, but
not limited to, a groom or other employee working in a stable.
"Full-time, year-round equine-related farm employee" shall not
include a migrant, seasonal, or temporary employee.¹
(cf: P.L.2015, c.75, s.1)

2. Section 6 of P.L.1983, c.31 (C.4:1C-9) is amended to read as
follows:
6. 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
(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.); and

k. House any 'full-time, year-round' equine-related farm employee in the same building or facility as horses in 'an area or on a level of the building or facility separate from where horses are boarded or housed] accordance with the provisions of section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).'[1]

(cf: P.L.2009, c.213, s.2)

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

(1) rules and regulations to implement subsection 'k.j. i.' of section 6 of P.L.1983, c.31 (C:4:1C-9); and

(2) an agricultural management practice that permits the housing of 'an] a full-time, year-round' equine-related farm employee in the same building in which horses are housed or boarded 'on a separate floor or in a separate addition of the building from where the horses are housed or boarded'.

b. Except as provided in subsection 'c.j. d.] of this section, the rules and regulations and agricultural practices adopted pursuant to subsection a. of this section shall, notwithstanding any local health code or zoning ordinance to the contrary, authorize:

(1) the construction, installation, and provision of housing for any 'full-time, year-round' equine-related farm employee as part of any building or facility constructed, or approved to be constructed, on a commercial farm for the housing or boarding of horses; and

(2) any 'full-time, year-round' equine-related farm employee to be housed in the same building or facility where horses are housed or boarded provided that the 'full-time, year-round' equine-related farm employee housing 'is established in a separate room or area
or on a separate level in the building or facility from where horses
are boarded or housed] meets the specifications set forth in
subsection c. of this section 1.

c. 1Full-time, year-round equine-related farm employee
housing established in the same building or facility where horses
are housed or boarded shall be located:

(1) on a separate floor of the building or facility above a floor
where horses are housed or boarded and separated from the floor on
which horses are housed or boarded by a ceiling and floor with at
least the fire rating required for separation between residential and
non-residential uses pursuant to the State Uniform Construction
Code; or

(2) on the same level of the building or facility where horses are
housed or boarded in an addition that is completely separated from
the part of the building or facility where horses are housed or
boarded by a wall that qualifies the addition as a separate building
for the purposes of the State Uniform Construction Code.

The floor on which, or the addition in which, full-time, year-
round farm employee housing is established shall have a ventilation
system separate from the ventilation system operating on a floor or
in an addition where horses are housed or boarded.

d. 1 The construction, installation, and provision of housing
pursuant to this section shall comply with any other provision of the
State Uniform Construction Code and Department of Community
Affairs standards and requirements which do not exclude the
construction, installation, or provision of housing units in the same
building as the boarding of horses 1under the State Uniform
Construction Code 1.

1[d.] e. 1 No certificate of occupancy shall be denied for housing
of 1an 1full-time, year-round 1equine-related farm employee in a
building where horses are housed or boarded if the housing
complies with the provisions of subsections 1a. 1b. 1[c. 1d.],
and i. of this section.

1[e.] f. 1 Housing constructed, installed, or provided pursuant to
this section shall 1not be construed to be a farm labor camp or
migrant labor camp for the purposes of 1be used only as housing for
full-time, year-round, equine-related farm employees, and shall not
be used to house any migrant or seasonal employee or worker.

g. This section shall not apply to housing constructed, installed,
or provided pursuant to 1the “Seasonal Farm Labor Act,” P.L.1945,
c.71 (C.34:9A-1 et seq.) and 1housing constructed, installed, or
provided pursuant to this section 1shall not be subject to any
provisions of that act.

1[f.] h. 1 Housing constructed, installed, or provided pursuant to
this section shall be exempt from the provisions and requirements
of P.L. 1966, c.168 (C.2A:42-74 et seq.).
This section shall apply only to housing constructed, installed or provided in connection with barns, stables, or other farm structures housing horses. Housing for any farm employee shall not be provided in any structures housing any other type of farm animal or domestic livestock other than horses.¹

4. This act shall take effect immediately.