



**KEEPING THE “GARDEN” IN THE GARDEN STATE:
HOW NEW JERSEY FARMING LEGISLATION HAS
FAILED TO ADEQUATELY PROTECT FARMING**

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“Those who labour in the earth are the chosen people of God, if ever he had a chosen people, whose breasts he has made his peculiar deposit for substantial and genuine virtue. It is the focus in which he keeps alive that sacred fire, which otherwise might escape from the face of earth.”

— *Thomas Jefferson*¹

ABSTRACT

New Jersey, whose official nickname is the Garden State, has a long and profound history of being agrarian and providing for the agricultural needs of nearby New York City and Philadelphia, as well as the State itself. However, as the United States has shifted away from an agrarian utopia as many founding fathers, such as Thomas Jefferson envisioned, so has New Jersey. Today, New Jersey is the most densely populated state in the Union and is losing farmland at an alarming rate. Although the New Jersey Legislature has taken steps to abate this issue, the results have been far from ideal. What New Jersey truly needs is comprehensive agriculture reform that addresses the issues that New Jersey farmers uniquely face in a rapidly changing world.

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1. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA (1782), reprinted in THE WORKS OF THOMAS JEFFERSON IV, 85–86 (Paul Leicester Ford ed. 1904).

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I. BACKGROUND

New Jersey, the fourth smallest state by square miles,² is known colloquially by many different names. Whether it be Jersey, Joisey, the Crossroads of the Revolution, the Clam State, or more commonly, the Garden State, New Jersey's nicknames are all unique.³ However, of all the colorful names listed above, the State's Legislature officially solidified New Jersey as the Garden State in 1954, through a legislative veto over then-presiding Governor Robert Meynor.⁴

2. *List of US States by Size*, 1KEYDATA, <https://state.1keydata.com/states-by-size.php> (last visited Jan. 3, 2020).

3. Bill Doyle, *A Brief History of Some of New Jersey's Other Nicknames*, NJ 101.5 (June 19, 2018), <http://nj1015.com/a-brief-history-of-some-of-new-jerseys-other-nicknames/>.

4. *Nickname*, THE STATE OF N.J., <https://www.state.nj.us/nj/about/facts/nickname/> (last visited Jan. 3, 2020).

The history of where the name the “Garden State” comes from is rather murky, and there are competing claims to its coinage.⁵ One story has it that a Cherry Hill, New Jersey farmer, by the name of Abraham Browning, first used the term during a 1876 speech at the Philadelphia Centennial exhibition for New Jersey Day.⁶ During the speech Browning recited, “our Garden State is an immense barrel, filled with good things to eat and open at both ends, with Pennsylvanians grabbing from one end and New Yorkers from the other.”⁷ However, Benjamin Franklin has also been credited with referring to New Jersey as “a barrel tapped at both ends,” thus, taking some of Browning’s claim away.⁸

While in 1876 New Jersey may have been an agricultural “barrel” supplying both the needs of Philadelphia and New York City, the State has since changed immeasurably in all senses. Today, New Jersey boasts a population of nearly nine million with an average of 1,195.5 people per square mile, making it the most densely populated state in the Union.⁹ To emphasize just how far off New Jersey is from an agrarian utopia that a name such as the Garden State suggests, New Jersey is the only state to have every county within its borders labeled as “urban” by the U.S. Census Bureau.¹⁰

Today, although New Jersey’s population and density may not point towards an agricultural haven, New Jersey still manages to maintain a strong agriculture industry. As of 2008 agriculture generated \$65 billion per year for the New Jersey economy, making it the third largest industry in the state, only behind pharmaceuticals and tourism.¹¹ New Jersey’s largest agricultural products include blueberries, which ranks eighth among all states, cranberries, which rank third among all states, and bell peppers, spinach, peaches, and lettuce, which rank fourth

5. Doyle, *supra* note 3; Christina Kozma, *Reaping What They Sow: What’s It Worth . . . to Keep the Farm?*, NJ MONTHLY (Feb. 7, 2008), <https://njmonthly.com/articles/jersey-living/reaping-what-they-sow>.

6. Kozma, *supra* note 5; ALFRED M. HESTON, *JERSEY WAGON JAUNTS VOL. I 72* (Atl. Cty. (N.J.) Historical Soc’y 1926).

7. *Nickname*, *supra* note 4.

8. *Id.*

9. *New Jersey Population 2019*, WORLD POP. REV., <http://worldpopulationreview.com/states/new-jersey-population/> (last updated June 5, 2019).

10. *Id.* According to the U.S. Census Bureau, an urban area “represent[s] densely developed territory, and encompass[es] residential, commercial, and other non-residential urban land uses.” *2010 Census Urban Area FAQs*, U.S. CENSUS BUREAU, https://www2.census.gov/geo/pdfs/reference/ua/2010ua_faqs.pdf? (last visited Jan. 3, 2020). Currently, the Census Bureau has two urban classifications, (1) Urbanized Areas (UAs) which have 50,000+ people, and (2) Urban Clusters (UCs) which have a population between 2,500 and 50,000. *Id.*

11. Kozma, *supra* note 5.

among all states.¹² New Jersey is also noted for horses, which are included under the agricultural umbrella, and in fact has more than Kentucky.¹³ New Jersey even boasts a modest 17% of all total land being devoted to farmland, measuring to 800,000 plus acres.¹⁴

Even though New Jersey's agricultural output points towards a strong agriculture sector, this fact simply isn't true. The lands on which New Jersey farms operate are the second most expensive in the Nation, averaging \$9,245 per acre.¹⁵ Not only is the land required to purchase a farm exorbitantly expensive, but the labor costs to run New Jersey farms are also more than the national average.¹⁶ New Jersey farms, due to population density, also face greater risks of upsetting neighbors compared to farms in more rural states, which can lead to lawsuits and community issues.¹⁷ All of these issues have resulted in an annual loss of 9,000 acres previously dedicated to farmland to newly burgeoning residential developments.¹⁸ While New Jersey is losing farmland at an alarming rate, threatening the credibility of the Garden State moniker, the New Jersey Legislature has taken steps to help farmers through the introduction of "farm-friendly" regulations.¹⁹ These regulations are embodied via the Right to Farm Act of 1983,²⁰ the Agriculture Retention and Development Act of 1983,²¹ and the Farmland Assessment Act of 1964.²²

This note will explore each of the above Acts, delving into their history, their application, and criticisms against them. Then, it will detail obstacles that New Jersey farms uniquely face and provide alternative legislative proscriptions that can be implemented to modify and bolster the current regime.

12. Bill Gallo, Jr., *Top Jersey crops: These plants bring in the most green*, NJ.com, https://www.nj.com/salem/2017/05/top_crops_is_the_tomato_no_1_in_jersey_think_again.html (last visited Jan. 3, 2020).

13. Kozma, *supra* note 5.

14. *Id.*

15. *Id.*

16. *See id.*

17. *See id.*

18. *Id.*

19. *See* Agriculture Retention and Development Act, N.J. STAT. ANN. § 4:1C-11 (West 2019); Farmland Assessment Act of 1964 N.J. STAT. ANN. § 54:4-23.1 (West 2019); Right to Farm Act, N.J. STAT. ANN. § 4:1C-1 (West 2019).

20. N.J. STAT. ANN. § 4:1C-1.

21. N.J. STAT. ANN. § 4:1C-11.

22. N.J. STAT. ANN. § 54:4-23.1.

II. THE RIGHT TO FARM ACT OF 1983

A. *History and Implementation*

Of New Jersey’s trio of pro-farming regulations to be discussed in this note, the Right to Farm Act was the first to be passed.²³ Right to farm laws, generally, are designed to shield farmers from nuisance suits that are likely to stem from agriculture-related activities.²⁴ These laws have become a staple of the agricultural law world and are currently in place in all 50 states; however, all are not the same.²⁵

New Jersey, following the national trend, adopted its own version of right to farm legislation in 1983, and unsurprisingly named it the Right to Farm Act.²⁶ Similar to other right to farm laws, New Jersey’s is aimed at “addressing conflicts among farmers, neighbors, municipalities, and counties regarding a farm’s practices.”²⁷ Regarding the specific legal contents of New Jersey’s Right to Farm Act, farms which satisfy the eligibility criteria are protected from both public and private nuisance suits and in some cases, the preemption of municipal ordinances.²⁸ In the Act’s preemption of municipal ordinances, an enumerated list of specifically protected agricultural activities are provided.²⁹ These protected agricultural activities include the producing, processing, marketing, and even the production of alternative energy sources so long as they are directly involved with the output of a commercial farm.³⁰

While the Right to Farm Act provides broad protections to farms, farms must be considered a “commercial farm” to fall under its provisions.³¹ To be considered a “commercial farm” a farm of five or more acres must produce \$2,500 annually of agricultural or horticulture products, a farm of less than five acres must produce \$50,000 annually of agricultural or horticultural products, or a beekeeping farm must

23. Marci D. Green, *Right to Farm Act Resolves Disputes in Most Densely Populated State*, 180 N.J. L.J. 709, 709 (2005).

24. Terence J. Centner, *Creating an ‘Undeveloped Lands Protection Act’ for Farmlands, Forests, and Natural Areas*, 17 DUKE ENVTL. L. & POL’Y F. 1, 1–2 (2006).

25. Alexandra Lizano & Elizabeth Rumley, *States’ Right-to-Farm Statutes*, NAT’L AGRIC. L. CTR., <http://nationalaglawcenter.org/state-compilations/right-to-farm/> (last visited Jan. 4, 2020).

26. Right to Farm Act, N.J. STAT. ANN. § 4:1C-1 (West 2019); THE RIGHT TO FARM ACT IN NEW JERSEY: A GUIDE FOR FARMERS, NEIGHBORS, AND MUNICIPALITIES, N.J. STATE AGRIC. DEV. COMM. (June 2016), <https://www.nj.gov/agriculture/sadc/rfprogram/resources/guidebook.pdf>.

27. N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 2.

28. Green, *supra* note 23, at 709–10.

29. N.J. STAT. ANN. § 4:1C-9 (West 2019); Green, *supra* note 23, at 709–10.

30. N.J. STAT. ANN. § 4:1C-9; N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 5.

31. N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 4.

produce \$10,000 annually of either honey, apiary-related products, or crop pollination services.³² Continually, non-beekeeping farms must also meet the eligibility criteria provided via the Farmland Assessment Act, which will be discussed in more detail later.³³ Regarding the Right to Farm Act's acreage requirements, acreage need not be contiguous so long as it is operated as a single enterprise, together called a "farm management unit."³⁴ Finally, after meeting the above listed criteria, commercial farms must also be located in zones that permit agriculture as of December 31, 1997, or have been in existence since July 2, 1998 and conform to acceptable agricultural practices, comply with Federal and State statutes, and not pose a threat to public safety.³⁵

The Right to Farm Act, to help enforce its provisions, requires that all complaints involving farms protected under the Right to Farm Act be first mediated via a County Agriculture Development Board (CADB).³⁶ Therefore, in the case of agriculture-related disputes, CADBs have primary jurisdiction, and complaints must be filed with them prior to filing a formal action in court.³⁷ In the case of a county not having a CADB, the complaint must be filed with the State Agriculture Development Committee (SADC) first.³⁸ Once at the CADB, or the SADC, it is evaluated whether or not the farm falls under the protections of Right to Farm.³⁹ Once it is confirmed that the farm falls under Right to Farm, the CADB or SADC can either protect in full, protect in part, or reject in full the protections afforded under Right to Farm on a case-by-case basis.⁴⁰ In the cases of the CADB or SADC protecting the farm activities, a public hearing may be held to find a resolution.⁴¹ However, if an individual or entity is unsatisfied with the decision, the appeal processes proceeds as follows: CADB to SADC to Superior Court, Appellate Division to New Jersey Supreme Court.⁴²

32. *Id.*

33. Farmland Assessment Act of 1964, N.J. STAT. ANN. § 54:4-23.3 (West 2019); N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 4.

34. N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 4.

35. *Id.*

36. *Id.* at 2.

37. *Id.* at 8.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

B. Legal Considerations and Case Law

The Right to Farm Act has been subjected to numerous legal issues since its inception, including New Jersey Superior Court, Appellate Division cases as well as a New Jersey Supreme Court case.⁴³ In *Township of Franklin v. Hollander*, the New Jersey Supreme Court upheld the provision that the Right to Farm Act preempts municipal land use regulations over commercial farms.⁴⁴ In its opinion, the court noted that the New Jersey Legislature placed its trust in CADBs and the SADC to make the correct decision whether a farm’s activities are agriculturally related or not.⁴⁵ The New Jersey Supreme Court also noted that while CADBs and the SADC have primary jurisdiction when it comes to “disputes between municipalities and commercial farms, the boards do not have *carte blanche* to impose their views.”⁴⁶ Instead, CADBs and the SADC have the authority to balance the interests of agricultural practices and the public health and safety.⁴⁷ Through *Hollander* the New Jersey Supreme Court provided the general rule that when a complaint is filed with a CADB or the SADC, the threshold question is if there is an agricultural management practice at issue, and if there is, “the CA[D]B or SADC must then consider relevant municipal standards in rendering its ultimate decision.”⁴⁸

In *Curzi v. Raub*, a New Jersey Superior Court, Appellate Division case, the court affirmed *Hollander* regarding who had primary jurisdiction regarding private nuisance cases.⁴⁹ *Curzi* involved a group of neighbors’ nuisance complaint against a farm’s placement of trailers along the property line.⁵⁰ With the complaint being initially filed with

43. *Id.* at 11.

44. *Twp. of Franklin v. Hollander*, 796 A.2d 874, 876 (N.J. 2002). The New Jersey Supreme Court clearly states that “[t]he Legislature has reposed trust in the County Agricultural Boards (CAB) and the State Agricultural Development Committee (SADC) to make the appropriate decisions in respect of whether the operation of a commercial farm implicated agricultural management practices, and, if so, whether those practices affect or threaten public health and safety.” *Id.* (signaling that they interpret New Jersey’s Right to Farm Legislation as placing final agricultural determinations in the hands of the CADBs and the SADC).

45. *Id.*

46. *Id.* at 877; *see also* *Twp. of Franklin v. Hollander*, 769 A.2d 427, 439 (N.J. Super. Ct. App. Div. 2001).

47. *Hollander*, 796 A.2d at 877.

48. *Id.* at 877; *Hollander*, 769 A.2d at 440.

49. *Curzi v. Raub*, 999 A.2d 1182, 1196 (N.J. Super. Ct. App. Div. 2010) (confirming that the “language of the Act is clear and unambiguous in requiring that any aggrieved person shall file a complaint with the county agricultural board ‘prior to filing an action in court.’ N.J.S.A. 4:1C-10.1”); N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 12.

50. *Curzi*, 999 A.2d at 1186; N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 12.

the trial court, the Appellate Division ruled that such filing was erroneous and that “[w]hether the farm’s practices constituted acceptable agricultural practices ‘was a determination [which] the CADB has primary jurisdiction to make.’”⁵¹

While *Curzi* was an important case for affirming that under the Right to Farm Act, CADBs/SADC have primary jurisdiction regarding farm practices pertaining to public health and safety, it was also important in revealing that there may be due process concerns implicated under Right to Farm.⁵² The court stated that:

Agricultural boards must conscientiously consider the impact of the proffered agricultural use on surrounding property owners. Failure to do so is an abuse of discretion. Boards shall provide notice to affected property owners when an application is made . . . by the farmer. Failure to do so in clear terms, describing with particularity the subject of the application and the consequences of the determination to be made, may deprive the determination of its binding effect on those individuals. Boards must temper their determinations with due consideration of the impact on affected parties.⁵³

This statement signaled that there could be instances where a CADB or the SADC failed to take private concerns into account, and merely focused on the agricultural impact of their determination, which would result in the decision being nullified. In turn, the SADC updated the notification requirements under the Right to Farm Act in 2014.⁵⁴ The amended notification requirements include that “[w]hen a commercial farm requests a site-specific AMP [Agricultural Management Practice] determination and the process reaches the public hearing stage, the commercial farm must provide written notice of the public hearing to several parties, including all property owners within 200 feet of the commercial farm.”⁵⁵ This amendment creates a formal process to alert nearby property owners of an impending change, as well as allows CADBs to ensure that they are properly balancing the “farm’s agricultural practices with the interests of private property owners who

51. N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 12 (quoting *Curzi*, 999 A.2d at 1187).

52. *Curzi*, 999 A.2d at 1199; N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 13.

53. *Curzi*, 999 A.2d at 1196 (internal citations omitted).

54. N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 13.

55. N.J. ADMIN. CODE § 2:76-2.8 (2018); N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 13.

might be affected,” to avoid the due process concerns that were brought to light under *Curzi*.⁵⁶

C. Criticisms of Right to Farm in New Jersey and Beyond

According to Brian Schilling, a member of the SADC, New Jersey’s Right to Farm Act is the nation’s strongest; however, not all New Jerseyans hold the same belief.⁵⁷ Jim Kinsel and Sherry Dudas, who own Honey Brook Organic Farm, have stated that Right to Farm has been of little help in expanding their operation.⁵⁸ Honey Brook Organic, a nationally recognized Community Supported Agriculture farm that has appeared on Food Network, has experienced issues since expanding their operation from Pennington, New Jersey, to Chesterfield, New Jersey.⁵⁹ Their issues have included neighbors parking on their private lane, leading to the neighbors calling the police, as well as filing a formal Right to Farm complaint against Honey Brook Organic’s distribution center in Chesterfield.⁶⁰ Honey Brook Organic, in turn, has accused Right to Farm of being retaliatory and expensive to farms such as their own.⁶¹

Although Schilling declined to comment on specific cases, he cited the issue as being a lack of “proper awareness of the Right to Farm Act,” although he also stated that “the SADC has been trying to educate the public and officials as to the proper venue for complaints.”⁶² Perhaps a bigger concern is that Schilling admitted to the belief that the farming industry may be “evolving faster than the regulatory process [and] [l]anguage in Right to Farm may not cover farmers who opt to open their land to new activities.”⁶³

While New Jersey’s Right to Farm law may receive criticism from farmers at home, all across the nation there are critiques of right to farm regimes, being that all fifty states have a right to farm regulation in place.⁶⁴ Some critics have called right to farm amendments and

56. N.J. ADMIN. CODE § 2:76-2.8; N.J. STATE AGRIC. DEV. COMM., *supra* note 26, at 13.

57. *For Some N.J. Farmers, the ‘Right to Farm Act’ Doesn’t Go Far Enough*, WHYY (July 13, 2012), <https://whyy.org/articles/for-some-nj-farmers-right-to-farm-act-doesnt-go-far-enough/> [hereinafter *For Some N.J. Farmers*].

58. *Id.*

59. *Id.* Of note, Chesterfield, New Jersey is the note author’s home town.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. See *Oppose “Right to Farm” Legislation*, ASPCA, <https://www.aspc.org/animal-protection/public-policy/oppose-right-farm-legislation> (last visited Jan. 4, 2020); Daniel C. Houston, *Critics of ‘Right to Farm’ Proposal Make Public Case*, THE ASSOCIATED PRESS (June 17, 2016), <https://www.apnews.com/59443263b32b4612a6ec13c963c8f672>; John Ikerd, *10 Reasons to Oppose ‘Right to Farm’ Amendments*, CIVIL EATS (July 17, 2014),

regulations “concerted effort[s] to shield factory farms and concentrated agricultural feeding operations from regulations to protect livestock, consumers and the environment.”⁶⁵ These oppositional sentiments spawned from the origination of right to farm legislation in the 1990’s, when the American Legislative Exchange Council (ALEC), a conservative think tank supported by “Big Ag” lobbied for their passage in states across the nation.⁶⁶ An example of the strength of “Big Ag” supporting right to farm amendments can be seen in North Dakota’s 2012 constitutional amendment.⁶⁷ The amendment prohibits any future restriction on agricultural technology, which may range “from battery cages for chickens to center point irrigation systems drawing scarce groundwater to aerial drones that monitor farm fields.”⁶⁸ Another alarming example of right to farm legislation supporting “Big Ag” is a case in which Gold Beach, Oregon residents were accidentally sprayed by a pesticide plane.⁶⁹ Due to right to farm protections, the pesticide applicator was merely fined and the pilot’s license was suspended, leaving the victims with little recourse for their health and property-related damages.⁷⁰

Fortunately, New Jersey has not enacted a constitutional right to farm amendment, which may take away from Schilling’s argument that New Jersey’s Right to Farm legislation is amongst the nation’s strongest.⁷¹ However, examples as showcased above magnify the importance of finding a fair and balanced middle ground, as the New Jersey Legislature may have inadvertently enacted a form of right to farm legislation that is so rigid and unyielding that it will result in extra burdens and costs on the very farms that it seeks to protect.⁷²

<https://civileats.com/2014/07/17/10-reasons-to-oppose-right-to-farm-amendments/>; Mary Turck, *New Right-to-Farm Laws Protect Big Ag, Not Small Farmers*, AL JAZEERA AMERICA (Oct. 9, 2014, 6:00 AM), <http://america.aljazeera.com/opinions/2014/10/right-to-farm-lawscommercialagricultureenvironmentanimalrights.html>.

65. *Vote ‘No’ on Missouri ‘Right to Farm’ Amendment in August*, KAN. CITY STAR, <https://www.kansascity.com/opinion/editorials/article603633.html> (last visited Jan. 4, 2020).

66. Turck, *supra* note 64.

67. *See id.* The amendment explicitly reads, “[n]o law shall be enacted which abridges the right of farmers and ranchers to employ agricultural technology, modern livestock production and ranching practices.” *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *See For Some N.J. Farmers, supra* note 57; Turck, *supra* note 64.

72. *See For Some N.J. Farmers, supra* note 57. *See generally* N.J. STATE AGRIC. DEV. COMM., *supra* note 26.

III. NEW JERSEY FARMLAND ASSESSMENT

A. *History and Implementation*

The New Jersey Farmland Assessment Act of 1964 (the “Farmland Assessment”) has been one of New Jersey’s broadest attempts to help protect the state’s dwindling farmland; however, the act is one that has been muddled in controversy since its inception.⁷³ The history of the Farmland Assessment began during the 1950s when New Jersey lost over 400,000 acres of farmland, which left the state with a modest 1.3 million acres of remaining farmable land in 1964.⁷⁴ Between 1950 and 1970, property taxes for farmland were nearly twenty-three dollars per acre, which led to farmers spending nearly one-fourth of their total net income on property taxes.⁷⁵ Due to pressures from farmers and other states, the New Jersey Farm Bureau petitioned for a change in New Jersey state law which required farmland to be assessed “without regard for its potential development value.”⁷⁶ However, the change was struck down by the New Jersey Supreme Court, which concluded that the statute “violated the State Constitution’s requirement for uniform property tax assessments.”⁷⁷ However, in 1964, an amendment to the New Jersey Constitution was proposed via referendum, with the slogan “Save Open Space in New Jersey.”⁷⁸ The campaign for the referendum raised \$40,000 (the equivalent of \$332,652.43 in 2019),⁷⁹ was supported by politicians across all political parties, environmental and civic groups, and was passed by New Jersey voters—1,043,262 yea to 425,815 nay.⁸⁰ The amendment resulted in the Legislature being permitted to “enact laws granting use-value assessments to agricultural and horticultural land, five acres or more in area, actively farmed for at least the two successive years before the farmer made his application,” commonly

73. See Jeffrey A. Friedman, Comment, *New Jersey’s Farmland Assessment: Welfare for New Jersey’s Landed Gentry or Beneficial Open Space Program?*, 15 TEMP. ENVTL. L. & TECH. J. 83 (1996).

74. Douglas Fifield Johnson, Note, *The Future of Farmland and Preservation: Will New Jersey Remain the Garden State?*, 12 RUTGERS L.J. 713, 714 (1981).

75. JOHN KOLESAR & JAYE SCHOLL, CTR. FOR ANALYSIS OF PUB. ISSUES, MISPLACED HOPES, MISSPENT MILLIONS: A REPORT ON FARMLAND ASSESSMENTS IN NEW JERSEY 3 (1972).

76. *Id.*

77. *Id.*

78. *Id.*

79. *CPI Inflation Calculator*, BUREAU OF LAB. STAT., https://www.bls.gov/data/inflation_calculator.htm (last visited Jan. 24, 2020). This number was calculated using January, 1964 and December, 2019 as the anchor dates.

80. KOLESAR & SCHOLL, *supra* note 75.

known today as the Farmland Assessment Act of 1964.⁸¹ The immediate aftermath of the amendments and the passing of the law was considered a great success;⁸² however, this successful sentiment has not remained the norm.

The Farmland Assessment, while effective in preserving farmland and open space, has not been as effective in achieving the goals the initial drafters anticipated. Although the average loss of farmland has been dramatically reduced numerically since the inception of the Farmland Assessment,⁸³ New Jersey farmers have continued to be assessed exorbitant tax rates per acre on their farms compared to the national average.⁸⁴ The Farmland Assessment has also been considered a tax shelter to land developers, speculators, as well as wealthy corporations and residential property owners.⁸⁵ For example, “the King of Morocco, Jackie Mars Vogel (heiress to the M&M Mars candy fortune), and Steve Forbes” were at one time all considered “farmers” under the Farmland Assessment.⁸⁶ Perhaps New Jersey’s most notorious farmer is now President Donald Trump.⁸⁷ According to Patch.com, President Trump keeps goats on his New Jersey golf courses, as well as farms hay and allows woodcutting on the properties, which allows him to qualify for the Farmland Assessment.⁸⁸ Some estimates have him paying less than \$1,000 of property tax on these properties, when otherwise the tax burden would be \$80,000.⁸⁹ Complaints and issues such as the ones listed

81. *Id.* at 3–4.

82. *Id.* C.H. Field, the executive secretary of the New Jersey Farm Bureau stated that “[the Farmland Assessment] has been highly successful in reducing the rate of loss of farms. Before the Act, we were losing a thousand farms a year in New Jersey, now 500 or less a year.” *Id.* at 5 (quoting Letter to the Editor, THE TRENTONIAN, Oct. 16, 1972). A New Jersey Commission on Open Space Policy report from 1971 also stated that “[t]he program has bought valuable time.” *Id.* at 6.

83. Friedman, *supra* note 73, at 86. The percentage of farmland lost per year however is greater. See KOLESAR & SCHOLL, *supra* note 75, at 6.

84. N.J. FARM BUREAU, KNOW SOME FACTS ABOUT . . . NEW JERSEY’S FARMLAND ASSESSMENT ACT (Jenny Carleo & Jack Rabin eds., 2009), https://sustainable-farming.rutgers.edu/wp-content/uploads/2014/09/NJ_FTA_Background_Facts.pdf (finding that “New Jersey farmers pay about \$50-\$80 tax per farmland acre. The 2002 national average farmland taxes paid were about \$5.70 per acre”).

85. Friedman, *supra* note 73, at 87; Jill P. Capuzzo, *Weeding Out ‘Fake Farmers’*, N.Y. TIMES (June 7, 2012), <https://www.nytimes.com/2012/06/10/realestate/new-jersey-in-the-region-weeding-out-fake-farmers.html>.

86. Friedman, *supra* note 73, at 83.

87. Eric Kiefer, *Trump’s N.J. ‘Goat Farmer’ Tax Break: Do You Qualify?*, PATCH, <https://patch.com/new-jersey/westorange/trump-s-n-j-goat-farmer-tax-break-do-you-qualify> (last updated Aug. 17, 2017, 1:13 PM).

88. *Id.*

89. *Id.*

above led to the amendment of the Farmland Assessment in April of 2013.⁹⁰

The original, unamended Farmland Assessment Act of 1964 stated:

For general property tax purposes, the value of land, not less than 5 acres in area, which is actively devoted to agricultural or horticultural use and which has been so devoted for at least the 2 successive years immediately preceding the tax year in issue, shall, on application of the owner, and approval thereof as hereinafter provided, be that value which such land has for agricultural or horticultural use.⁹¹

The Act also stipulated that land is actively devoted to farming when it produces \$500 a year on the first five acres, and \$5 a year per acre in excess of the first five.⁹² However, in the case of woodland and wetlands, it must merely produce \$.50 a year per acre.⁹³ Land under structures such as barns, farm markets, grain silos, greenhouses, etc. fall under the “actively devoted” analysis, while land under the residence of property, lawns, and recreation areas are not given a reduction in taxation under the Act.⁹⁴

Many key provisions of the Farmland Assessment, however, were changed in 2013, as previously stated.⁹⁵ The first key change to the Act increased the annual gross sale requirement from \$500 to \$1,000 “for the first five acres of land.”⁹⁶ This change, however, does not pertain to land “included in a Woodland Management Plan,” which still has gross sales requirements of \$500 for the first five acres.⁹⁷ The amendment also requires that within one year of its passage, guidelines were to be developed to more effectively identify “generally accepted agricultural and horticultural practices to assist in determining whether land may be deemed to be an agricultural use, horticultural use, or actively devoted to agricultural or horticultural use.”⁹⁸ Furthermore, in order to help enforce and prevent fraud, the changes permit the imposition of up to

90. N.J. DEP’T OF AGRIC., FARMLAND ASSESSMENT OVERVIEW 9–10 (2015), <https://www.state.nj.us/agriculture/divisions/anr/pdf/farmlandassessmentoverview.pdf>.

91. N.J. STAT. ANN. § 54:4-23.2 (West 1964).

92. N.J. DEP’T OF AGRIC. IN CONSULTATION WITH THE N.J. DEP’T OF TAX’N, NEW JERSEY’S FARMLAND ASSESSMENT ACT: A PRIMER ON BASIC REQUIREMENTS 1 (2001), <https://www.njleg.state.nj.us/PropertyTaxSession/OPI/farmland.pdf>.

93. *Id.*

94. *Id.* at 2.

95. N.J. DEP’T OF AGRIC., *supra* note 90, at 9.

96. *Id.*

97. *Id.*

98. *Id.*

\$5,000 in civil penalties “for gross, intentional misrepresentations on applications.”⁹⁹

B. Legal Considerations and Case Law

While the statutory framework of the Farmland Assessment is considerably broad, and general enforcement and application powers are governed by the municipalities, judicial determinations have been required to fill the interstices of the regime. Examples of this gap filling include holdings that water reserve land does not fall within the purview of the Farmland Assessment,¹⁰⁰ and greenhouses that are open to the public qualify for the Farmland Assessment.¹⁰¹ Although New Jersey courts have made some hardline rulings regarding what is and is not permitted under the Farmland Assessment,¹⁰² the courts have generally taken a “current or present function” approach when determining whether land is eligible.¹⁰³ This approach has led to general confusion regarding the applicability of the Farmland Assessment and, in turn, has resulted in a fairly case-by-case and fact-specific analysis being essential in determining whether one’s property will be eligible.¹⁰⁴ Most recently, the New Jersey Tax Court held that it will not accept “rule of thumb” measurements regarding the farmable land requirement, and naturally occurring crops will not be counted towards the acreage requirement.¹⁰⁵

99. *Id.* at 10.

100. *City of East Orange v. Twp. of Livingston*, 246 A.2d 178, 190 (N.J. Super. Ct. Law Div. 1969) (“The Farmland Assessment Act of 1964, in the light of its constitutional underpinning . . . did not intend to treat in any way or to confer any special different, or new tax status upon municipally owned watersheds.”).

101. *Twp. of Monroe v. Gasko*, 868 A.2d 1022, 1028 (N.J. 2005) (“[I]t cannot be that temporary greenhouses are disqualified from farmland tax assessment because some sales-related activities . . . may occur within the . . . place there.”).

102. *See id.* at 1024; *City of East Orange*, 246 A.2d at 191.

103. *See City of East Orange*, 246 A.2d at 190–91; *see also* *Centex Homes of N.J., Inc. v. Manalapan Twp.*, 4 N.J. Tax 599, 613 (1982); *Urban Farms, Inc. v. Twp. of Wayne*, 386 A.2d 1357, 1359–60 (N.J. Super. Ct. App. Div. 1976); *Twp. of Andover v. Kymer*, 356 A.2d 418, 419 (N.J. Super. Ct. App. Div. 1975).

104. *See* KOLESAR & SCHOLL, *supra* note 75, at 24–25.

105. *Hertz v. Borough of Lincoln Park*, 31 N.J. Tax 1, 20–22 (N.J. Tax Ct. 2019). The Court further clarified the fact that when a tax assessor is evaluating land to see whether it counts under the five-acre requirement, said assessor “must be able to readily identify growth areas as deliberate and managed, and not merely part of naturally occurring forest growth.” *Id.* at 23.

C. Criticisms of Amended Farmland Assessment

Even though the Farmland Assessment program was amended in 2013,¹⁰⁶ problems still remain. In the year immediately following the passage and implementation of the amended Farmland Assessment, New Jersey only saw a 1% decrease in the farms that qualified for Farmland Assessment.¹⁰⁷ This 1% was reflected in a mere \$1.5 million decrease in the overall value of farmland assessments, the total being \$417.6 million in 2016.¹⁰⁸ Businesses in New Jersey that still qualify include PSE&G and Six Flags Great Adventure.¹⁰⁹ Other properties that remain eligible include ones owned by real estate developers such as Toll Brothers, and celebrities such as Bruce Springsteen, Jon Bon Jovi, and Steve Forbes.¹¹⁰ New Jersey has even considered Congressmen Scott Garrett and Rodney P. Frelinghuysen “farmers” under the new Farmland Assessment;¹¹¹ both are no longer representatives.¹¹²

Jeff Tittel, the leader of the New Jersey Sierra Club, has expressed concern with the changes, saying “[i]t just put a veneer on [the Farmland Assessment] and still allows it to happen,” referring to properties which are not primarily farms but still receive the benefits afforded under the Farmland Assessment.¹¹³ In fact, it appears that the changes have almost completely missed their mark. According to Frank Pinto, a consultant who focuses on issues related to farmland assessment, those affected are mainly “very small horse farms,” which he refers to as “hobby farms.”¹¹⁴

106. See N.J. STAT. ANN. § 54:4-23.3d (West 2019).

107. Colleen O’Dea, *New Farmland Assessment Reveals ‘Fake Farmers’ Still Getting Tax Breaks*, NJ SPOTLIGHT (Feb. 28, 2017), <https://www.njspotlight.com/stories/17/02/23/new-farmland-assessment-reveals-fake-farmers-still-getting-tax-breaks/>.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. Herb Jackson, *Rep. Rodney Frelinghuysen Announces Retirement from the House*, NORTHJERSEY.COM, <https://www.northjersey.com/story/news/new-jersey/2018/01/29/rodney-frelinghuysen-retire-election-2018-congress/1074824001/> (last updated Jan. 29, 2018, 6:01 PM); *Rep. Scott Garrett*, GOVTRACK, https://govtrack.us/congress/members/scott_garrett/400145 (last visited Jan. 24, 2020).

113. O’Dea, *supra* note 107 (internal quotations omitted).

114. *Id.*

IV. THE AGRICULTURE RETENTION AND DEVELOPMENT ACT OF 1983

A. *History and Implementation*

The Agriculture and Retention and Development Act of 1983 (“ARDA”) was signed into law on January 26, 1983, along with its sister legislation the Right to Farm Act.¹¹⁵ Through ARDA, New Jersey established the Farmland Preservation Program (the “Program”), which “is designed to strengthen the agricultural industry and preserve important farmlands to enhance the economy and quality of life in the Garden State.”¹¹⁶ While preservation of farmland was the underlying goal of ARDA, the declared legislative goal was to “provide a means for the SADC to purchase land to keep it as farmland.”¹¹⁷ Under the Program, those who own farmland have five options to choose from—not only to best benefit their operation, but also to help maintain a viable farming community in New Jersey.¹¹⁸ These options include the Eight-Year Program, Easement Purchase, Easement Donation, and Fee Simple.¹¹⁹ Under the Eight-Year Program, property-owners voluntarily relinquish the ability for non-agricultural development on the land for eight years.¹²⁰ In turn, landowners can become “eligible for cost-sharing grants for soil and water conservation projects and other statutory benefits and protection.”¹²¹

The Easement Purchase option, which pertains predominantly to permanently preserved farmland, permits landowners to sell the rights to develop on their land to the CADB.¹²² The sale price is determined based on the appraised value of those development rights.¹²³ However, property owners retain ownership of their land and become eligible for benefits and other protections.¹²⁴

115. *30 Years of Preserving Farmland . . . and Protecting the Right to Farm*, N.J. STATE AGRIC. DEV. COMM. 2 (2013), <https://www.nj.gov/agriculture/sadc/publications/2013annualreportFINAL.pdf>.

116. *The Agriculture Retention and Development Act: New Jersey's Farmland Preservation Program: Securing the Future of the Garden State's Farmland*, N.J. DEP'T OF AGRIC., <https://web.archive.org/web/20080603194418/http://www.nj.gov/agriculture/farmpres.htm> (last visited Jan. 4, 2020) [hereinafter *Securing the Future*].

117. *Bruce Paparone, Inc. v. State, Agric. Dev. Comm.*, 920 A.2d 770, 775 (N.J. Super. Ct. App. Div. 2007).

118. *See Securing the Future*, *supra* note 116.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

The third option available is Easement Donation, which allows the above development rights to be donated, instead of sold, to the CADB or SADC.¹²⁵ These landowners, while receiving the same benefits as those who sell their rights, are also able to receive “significant income and estate tax benefits.”¹²⁶ With the Fee Simple option, the SADC acquires farms, and then based upon their fair market value, auctions them to private individuals.¹²⁷ However, with the SADC acting as an intermediary, the landowner is able to quickly dispose of the property, and agricultural deed restrictions are able to be effectively implemented.¹²⁸ The effectiveness of the above options lies in the fact that once the deeds to the lands are encumbered by such restrictions, they run with the land in perpetuity, and thus, require future owners to abide by the same restrictions.¹²⁹

Not only are farmers compensated for their decisions to preserve their farmland, but they are also given other significant benefits.¹³⁰ These benefits include protection from the government exercising eminent domain upon their land, disbursements of grants and loans in order to construct new buildings and utilities for non-farm structures, protection from restrictions on the use of water and electricity, and grants for conservation projects.¹³¹

B. Legal Considerations and Case Law

While ARDA was necessary to formally establish the Program, the resulting cases in which courts have been required to interpret ARDA mainly revolve around the powers of the SADC.¹³² Specifically, the New Jersey Supreme Court interpreted the SADC’s power under ARDA in

125. *Id.*

126. *Id.*

127. *Id.*

128. *See id.*

129. *See id.*

130. *See id.*

131. *Id.*

132. *See generally* State v. Quaker Valley Farms, LLC, 192 A.3d 996, 999 (N.J. 2018); Bruce Paparone, Inc. v. State, Agric. Dev. Comm., 920 A.2d 770, 775 (N.J. Super. Ct. App. Div. 2007); Dilts v. Franklin Twp. Planning Bd., 639 A.2d 752, 758 (N.J. Super. Ct. Law Div. 1993), *aff’d*, 639 A.2d 743 (N.J. Super. Ct. App. Div. 1994). In *Dilts*, the court stated that “[t]he ARDA is the enabling legislation for the establishment of county, state, and local development boards.” *Id.* at 756. The court then provided that the New Jersey Legislature “authorized ‘State and county organizations [such as the SADC and CADBs] to coordinate the development of farmland preservation programs.’ . . . While municipalities are encourage[d] to approve local programs . . . municipalities’ roles are limited . . .” *Id.* at 756–57.

State v. Quaker Valley Farms, LLC.¹³³ In *Quaker Valley Farms*, Quaker Valley owned a 120 acre parcel of land that was deed restricted under the Program.¹³⁴ As part of the deed restriction, New Jersey owned an easement on the property that limited its use to agricultural purposes.¹³⁵ Quaker Valley proceeded to excavate and level one-sixth of the farm's acreage in order to build temporary greenhouses to grow flowers, the result of which "destroyed the land's prime quality soil."¹³⁶ The SADC proceeded to investigate the excavation and concluded that Quaker Valley "violated its deed of easement and the Agriculture Retention and Development Act (ARDA)."¹³⁷ Quaker Valley—and Amicus New Jersey Farm Bureau—argued that "the SADC ha[d] not adopted soil disturbance limitations in any form" and thus "[could not] establish that the soil disturbance in this case was a prohibited activity under the deed."¹³⁸ Nonetheless, the court determined that considering the SADC's dual purpose of "strengthen[ing] the agricultural industry" and "preserv[ing] farmland," and its position "[a]s the agency responsible for the administration and enforcement of the ARDA," the judiciary would defer to the SADC's determinations, despite the fact that it had not promulgated soil disturbance standards.¹³⁹ Thus, the SADC has incredibly broad powers in making determinations regarding violations of ARDA.

V. MOVING FORWARD: OBSTACLES & FUTURE STRATEGIES

It is clear, based upon the above laws, that New Jersey lawmakers have a desire to both maintain and preserve New Jersey's farmable land, as well as help lower the burdens that New Jersey Farmers uniquely face. However, what is not clear is how this result will be effectively accomplished. Granted, the New Jersey Legislature has taken some ameliorative measures—although ineffective—in combatting specific farming related issues; there are, however, many more issues left

133. See *Quaker Valley Farms*, 192 A.3d at 998.

134. *Id.*

135. *Id.* Specifically, "[t]he deed of easement prohibits any activity on the property that is 'detrimental to . . . soil conservation,' but permits the construction of 'any new buildings for agricultural purposes.'" *Id.*

136. *Id.*

137. *Id.*

138. *Id.* at 1005.

139. *Id.* at 1010–11. The New Jersey Supreme Court also cited to *Bergen Pines Cty. Hosp. v. Dep't of Human Servs.*, 476 A.2d 784, 793 (N.J. 1984). *Id.* at 1011 (stating that agencies are delegated authority to promulgate rules and implement policy because they have "the staff, resources, and expertise to understand and solve those specialized problems").

unaddressed. This section will identify current issues in New Jersey, beyond the above-articulated laws, that are preventing the State from being able to fully and adequately tackle the complicated issues faced by farmers, and more-so the continued depletion of farmable land. This section will then advocate for comprehensive state agriculture reform, as well as discuss measures taken by other states that can be implemented in the Garden State.

A. *Obstacles*

1. Cost of Labor

According to the United States Census Bureau, as of 2014, the median household income in New Jersey is \$72,062 while the median national average is \$53,482.¹⁴⁰ More specifically, according to the New Jersey Department of Labor and Workforce Development’s Division of Economic & Demographic Research, citing the Bureau of Labor Statistics, New Jersey laborers have a mean salary of \$30,280 as of December 2019.¹⁴¹ To get even more granular, the minimum wage in New Jersey is currently \$11.00 and set to increase to \$15.00 by 2024.¹⁴² Comparatively, the federal hourly wage rate is \$7.25.¹⁴³

Looking at the states with the most farms, those being Texas, Missouri, and Iowa,¹⁴⁴ their respective minimum wages are \$7.25, \$9.45, and \$7.25.¹⁴⁵ With the exception of Missouri, New Jersey’s minimum cost of labor is nearly 52% higher than Texas, Iowa, and the federal hourly wage. And, when New Jersey’s minimum wage rises to \$15.00 per hour, *ceteris paribus*, that figure will grow to 106%. Based upon the above statistics, only looking at labor inputs, it is safe to conclude that New Jersey farms are more expensive to run than their counterparts across the nation, and with the newly ratified increases, this issue is going to intensify going forward.

140. *Wages by Industry & Occupation*, STATE OF N.J.: BUS. PORTAL, <https://www.nj.gov/njbusiness/at-a-glance/wages/> (last visited Jan. 6, 2020).

141. N.J. DEPT OF LABOR AND WORKFORCE DEV., DIV. OF ECON. & DEMOGRAPHIC RESEARCH, LABOR MARKET INFORMATION UPDATE FOR OCTOBER 2019 17 (2019), <https://www.nj.gov/labor/lpa/content/maps/lmiupdate.pdf>.

142. Katherine Landergan, *Murphy Signs Bill to Boost New Jersey’s Minimum Wage to \$15*, POLITICO (Feb. 2, 2019, 2:17 PM), <https://www.politico.com/states/new-jersey/story/2019/02/04/murphy-signs-law-to-boost-new-jersey-minimum-wage-to-15-836467>.

143. *Id.*

144. Rob Cook, *Ranking of States with the Most Farms*, BEEF 2 LIVE, (Dec. 19, 2019), <https://beef2live.com/story-states-farms-ranking-1-50-154-113143>.

145. *State Minimum Wages*, NAT’L CONF. OF STATE LEGISLATURE (Jan. 7, 2019), <http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx#Table>.

According to the United States Department of Agriculture, labor costs are the fourth largest cost for farms, totaling 9.8% of total expenditures.¹⁴⁶ This number increases to 13.8% for crop farms,¹⁴⁷ which is New Jersey's third largest farm and agriculture commodity group.¹⁴⁸ Therefore, New Jersey farms, on average, are paying a larger overall portion of their revenue to employ laborers.

While the above analysis relies mainly on national averages relating to farm labor costs, the reality is that New Jersey farms likely pay more than these averages would suggest. New Jersey, on a yearly basis, relies on anywhere from 6,000 to 16,000 migrant workers to work as day laborers on farms.¹⁴⁹ According to Dory Dickson, director of Migrant Worker Outreach, "[F]armers are totally dependent on these workers. . . . [As] [p]eople who live here aren't interested in working the fields, because it's just backbreaking work."¹⁵⁰ The vast majority of migrant workers in New Jersey are employed via the Department of Labor's H-2A program.¹⁵¹ The H-2A visa program mandates that such workers in New Jersey are to be paid \$13.34 per hour (21% higher than the New Jersey minimum wage).¹⁵² However, if a worker does not work under the H-2A program, they are still subject to New Jersey's minimum wage requirements.¹⁵³ Even though farms are subject to wage minimums

146. U.S. DEP'T OF AGRIC., NAT'L AGRIC. STAT. SERV., FARM PRODUCTION EXPENDITURES: 2017 SUMMARY 5 (2018), <https://downloads.usda.library.cornell.edu/usda-esmis/files/qz20ss48r/6108vd85g/nk322h03p/FarmProdEx-08-02-2018.pdf>.

147. *Id.* Labor is also the largest expenditure for crop farms. *Id.*

148. *About NJDA*, N.J. DEP'T OF AGRIC., <https://www.state.nj.us/agriculture/about/overview.html> (last visited Jan. 6, 2020).

149. Marija Borjan, Patricia Constantino & Mark G. Robson, *New Jersey Migrant and Seasonal Farm Workers: Enumeration and Access to Healthcare Study*, 18 *NEW SOLUTIONS* 77, 84 (2008), <https://journals.sagepub.com/doi/pdf/10.2190/NS.18.1.e>; *Migrant Workers Keep New Jersey's Blueberry Farms Local*, *NEW AM. ECON.* (Aug. 30, 2016), <https://www.newamericaneconomy.org/feature/migrant-workers-keep-new-jerseys-blueberry-farms-local/> [hereinafter *Migrant Workers*]. Migrant workers are defined as "individual[s] who [are] required to be absent from a permanent place of residence for the purpose of seeking remunerated employment in agricultural work." *The Migrant / Seasonal Farmworker*, MIGRANT CLINICIANS NETWORK, <https://www.migrantclinician.org/issues/migrant-info/migrant.html> (last visited Jan. 6, 2020).

150. *Migrant Workers*, *supra* note 149.

151. Kathleen O'Brien, *Medical Van Treats Migrant Workers in the Fields of N.J.*, *NJ.COM*, https://www.nj.com/healthfit/index.ssf/2016/10/migrant_farm_workers_doctor_health_van.html (last updated Jan. 16, 2019).

152. David Bier, *H-2A Guest Worker Minimum Wages Up in 2020, 57% above New State Minimum*, *CATO INST.*, (Jan. 3, 2020, 12:12 PM), <https://www.cato.org/blog/h-2a-guest-worker-minimum-wages-2020-57-above-new-state-minimums>.

153. Seasonal Farm Labor Act, N.J. STAT. ANN. § 34:9A-1 (West 2019); *What Farm Workers, Crew Leaders & Farmers Need to Know About New Jersey Labor Laws*, *NJ.GOV*, https://www.nj.gov/labor/forms_pdfs/lsse/MW-402.pdf (last visited Jan. 6, 2020).

in the context of migrant workers, often the migrant workers reside on their employer’s farms, living in “employer-owned housing that is licensed and state-regulated” or in “unlicensed, hazardous labor camps,” either of which lead to increases in the overall labor expenditure for farms.¹⁵⁴

In order to stay competitive in a global and national marketplace, it is imperative that New Jersey farmers are able to keep their costs low. With labor contributing up to 13% of total costs in some cases,¹⁵⁵ our farmers are at an implicit disadvantage. However, with legislation already passed raising minimum wages even further,¹⁵⁶ it is unlikely that New Jersey farmers will be able to look to the government for help in this area.

2. Cost of Land & Ability to Expand

According to the U.S. Bureau of Economic Analysis, New Jersey has the highest land value in the nation.¹⁵⁷ The report states that New Jersey land is “valued at \$196,410 per acre . . . that’s without buildings or other structures.”¹⁵⁸ The state with the second highest value per acre is Rhode Island, valued at \$133,730, equating to about 47% less than New Jersey.¹⁵⁹ According to Eugenia “Jean” Bonilla, the 2015 President of New Jersey Realtors, there are numerous reasons land values in New Jersey are so much more expensive than the rest of the country.¹⁶⁰ Those reasons include the perceived benefits of living in the suburbs or rural areas, New Jersey’s proximity to cities such as Philadelphia and New York City, and the scarcity of land in the Garden State.¹⁶¹ I’m also of the personal belief that New Jersey judicial decisions, specifically the *Mount Laurel* cases, may have contributed to the exorbitant price of land in New Jersey; but I have been unable to find empirical evidence to support this hypothesis.¹⁶²

154. Teresa Wiltz, *States Struggle to Provide Housing for Migrant Farmworkers*, PEW (May 2, 2016), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/05/02/struggle-to-provide-housing-for-migrant-farmworkers>.

155. U.S. DEP’T OF AGRIC., *supra* note 146.

156. Landergan, *supra* note 142.

157. Alan Richman, *New Jersey Land Values Highest in the Nation*, NJ.COM, https://www.nj.com/njcomhomesforsale/index.ssf/2015/08/new_jersey_land_values_highest.html (last updated Jan. 17, 2019).

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. One of the most controversial lines of court cases in New Jersey history is *Southern Burlington County N.A.A.C.P. v. Mount Laurel* and its progeny. S. Burlington Cty. NAACP v. Mount Laurel, 336 A.2d 713 (N.J. 1975); *The Mount Laurel Doctrine*, N.Y. TIMES (Jan.

While the cost of land, at face value, appears to be prohibitive for many future homeowners, real estate investors, and businesses, the cost of land is also an obstacle for the future of farming in New Jersey, as seen through the Farmland Preservation Program.¹⁶³ According to the New Jersey chapter of the Northeast Organic Farming Association (“NOFA-NJ”), “one of the toughest challenges” to becoming a farmer is “actually finding the land to farm.”¹⁶⁴ NOFA-NJ cites “soaring” land prices, as well as developers acquiring large plots of unreserved land as the chief antagonists preventing young farmers from purchasing farmland.¹⁶⁵ More established farmers inevitably face the same obstacles if they are trying to expand.¹⁶⁶ Because of the scarcity of farmable land in New Jersey, and the cost of acquiring the land that is available, both young and established farmers have had to turn to leasing land.¹⁶⁷ Although leasing may be a short term solution, it does not provide farmers with a stable future, as a developer may swoop in and offer the lessor an attractive sum of money to purchase the land outright. The

28, 2013), <https://www.nytimes.com/2013/01/29/opinion/the-mount-laurel-doctrine.html>; *Judicial Duty in New Jersey*, N.Y. TIMES (Feb. 24, 1986), <https://www.nytimes.com/1986/02/24/opinion/judicial-duty-in-new-jersey.html>. In *Mount Laurel*, the New Jersey Supreme Court held that every municipality “must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing” *Mount Laurel*, 336 A.2d at 743. The key language that pertains to my inclination of Mt. Laurel’s impact on the cost of land is the court’s statement that prohibits “municipalities which are developing but which ‘still are not completely developed and remain in the path of inevitable future residential, commercial and industrial demand and growth’ from partaking in exclusionary zoning. *Id.* Originally, *Mt. Laurel’s* impact on rural communities was not even considered. *Id.* However, the court did note that “the time may well come when the frontiers of suburbia will reach these areas.” *Id.* at 748. Subsequently, future iterations of *Mt. Laurel* did exclude “open spaces, rural areas, prime farmland, [and] conservation areas” from its obligations. *S. Burlington Cty. NAACP v. Mount Laurel*, 456 A.2d 390, 418 (N.J. 1983).

By its mandate, *Mt. Laurel* compels the vast majority of N.J. municipalities to supply low to moderate income housing. In turn, this requires municipalities to amend their zoning ordinances to permit this type of housing, which leads to increased land values. In short, there may be reason to believe that New Jersey Courts invariably artificially inflated land values through their judicial activism in *Mount Laurel*.

163. See *Securing the Future*, *supra* note 116.

164. Diane Landis, *Young Farmers Wanted: 60 Acres to Lease*, NOFA-NJ (May 11, 2018), <https://nofanj.org/special-farm-opportunity-at-villa-milagro/>. A survey conducted by the National Young Farmers Coalition revealed that 65% of individuals surveyed considered access to land as the biggest challenge. *Id.*

165. *Id.*

166. See *id.*

167. See *id.* In fact, leasing of farmland in New Jersey has become so prominent that NOFA-NJ partnered with the SADC to provide resources for farmers to learn the basics of leasing land. These resources include a guidebook which contains sample leases and an FAQ worksheet. *Id.*

lessee farmer will also have to grapple with issues such as whether the leased land has the proper infrastructure (e.g., irrigation, barns, storage, etc.) to foster a sustainable growing pattern.

As previously stated, New Jersey loses 9,000 acres of farmable land to new residential developments yearly.¹⁶⁸ Not only does New Jersey lose a large amount of farmland yearly, but it loses a higher percentage than any other state.¹⁶⁹ Coupled with the cost of land in New Jersey, farmers are limited in their ability to expand and grow their business. While legislation such as Farmland Preservation seeks to preserve land already dedicated to farming, there is currently no legislation aimed at expanding New Jersey’s total number of farmable acres. Therefore, as time goes on, farmable land will only continue to rise in both scarcity and cost.

3. Climate Change

Agriculture, more-so than other industries, is severally susceptible to climate change and weather-related phenomena.¹⁷⁰ America’s most notorious example of weather-related agricultural hardship is the Dust Bowl, in which poor farming practices and drought met, causing huge crop failures that left farms no capital to replant their fields.¹⁷¹ Currently, we are in the warmest climate period “in the history of modern civilization.”¹⁷² As of 2017, extreme weather events have resulted in \$1.1 trillion in costs for the United States.¹⁷³

Changes in rain patterns are one the biggest concerns of farmers. According to a U.S. Global Change Research Program (“USGCRP”) report, due to climate change “[h]eavy rainfall is increasing in intensity and frequency across the United States and globally and is expected to continue to increase.”¹⁷⁴ So far, the largest changes in rainfall have occurred in the northeast, where New Jersey is located.¹⁷⁵ In fact, New Jersey had its largest rainfall on record since record-keeping began in

168. Kozma, *supra* note 5.

169. See Michael Miller, *New Jersey Gains Farms Despite Losing Farmland*, PRESS ATLANTIC CITY (Nov. 11, 2010), https://www.pressofatlanticcity.com/news/press/new_jersey/new-jersey-gains-farms-despite-losing-farmland/article_05b35d60-ee19-11df-aaf1-001cc4c002e0.html.

170. See Perry Elert, Note, *Crop Insurance Reform in the Face of Climate Change*, 25 HASTING ENVTL. L.J. 183, 184–86 (2019).

171. *Id.* at 185–86.

172. U.S. GLOB. CHANGE RESEARCH PROGRAM, CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME 1, at 10 (D.J. Wuebbles et al. eds., 2017).

173. *Id.* at 12.

174. *Id.* at 10.

175. *Id.*

1895, averaging 64.09 inches of precipitation statewide in 2018.¹⁷⁶ Even if critics argue that 2018 was a one-year anomaly, the United States Environmental Protection Agency (“EPA”) has stated that the average level of precipitation has increased 5 to 10% over the last century.¹⁷⁷

Farmers in the Northeast—and more specifically New Jersey—are facing increased uncertainty due to climate change via increased temperatures and drought, extreme weather events, rising sea levels, and the increase of atmospheric carbon dioxide.¹⁷⁸ These phenomena each have their own unique impact on New Jersey agriculture. Warmer temperatures threaten making conditions unsuitable for two of New Jersey staple crops, blueberries and cranberries, while also increasing the costs of irrigation and pest management.¹⁷⁹ Increased rainfall, rising sea levels, and other extreme weather events pose a threat of flooding farmland and decreasing the overall quality of crops,¹⁸⁰ and even the viability of future farmable land.¹⁸¹ Increasing carbon dioxide may even benefit some weed species, which may inundate crops if not properly treated with herbicides.¹⁸²

Even though climate change may or may not pose an immediate threat to New Jersey’s agriculture industry, it surely will require farmers to adapt and make changes to their practices.¹⁸³ Fortunately, New Jersey has been active in doing its part to curb global warming as seen through the passage of the Global Warming Response Act in 2007, and membership in the Regional Greenhouse Gas Initiative (“RGGI”).¹⁸⁴

176. Scott Fallon, *NJ Sets Record for Rain, Sleet, Snow in 2018. More Precipitation on the Way for Winter*, N. JERSEY RECORD, <https://www.northjersey.com/story/weather/2019/01/02/2018-wettest-record-new-jersey-climate-change-global-warming/2465222002/> (last updated Jan. 3, 2019, 2:25 PM).

177. ENVTL. PROT. AGENCY, WHAT CLIMATE CHANGE MEANS FOR NEW JERSEY (Aug. 2016), <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-nj.pdf>.

178. N.J. CLIMATE ADAPTATION ALL., A SUMMARY OF CLIMATE CHANGE IMPACTS AND PREPAREDNESS OPPORTUNITIES FOR THE AGRICULTURAL SECTOR IN NEW JERSEY 2 (Mar. 2014), <https://www.sas.rutgers.edu/cms/njadapt/docman-lister/resource-pdfs/96-njcaa-agriculture/file>.

179. *Id.* at 5.

180. *See id.*

181. *See id.*

182. *See id.* at 6.

183. *See* Payton Guion & Michael Sol Warren, *Here’s How Climate Change Will Make N.J. Deadlier in Your Lifetime*, NJ.COM, https://www.nj.com/news/index.ssf/2018/10/climate_change_will_make_nj_deadlier_and_it_will_p.html (last visited Jan. 6, 2020).

184. N.J. STAT. ANN. § 26:2C-37 (West 2007); Guion & Warren, *supra* note 183. The changing political climate in New Jersey has resulted in both the state being a member of the RGGI and then withdrawing from the RGGI. *Id.* Former Governor Jon Corzine made New Jersey a founding member of the RGGI in 2007, but then in 2011 Chris Christie

However global warming is a worldwide issue, as the name suggests, and New Jersey is largely dependent on the actions of larger government entities to effectuate real change and progress.

B. Future Strategies

1. Practicality

While the pieces of legislation addressed within this note were designed to aid farmers, whether helping protect against nuisance complaints,¹⁸⁵ making tax assessments less burdensome,¹⁸⁶ or preserving the current agriculture in the state,¹⁸⁷ the prescriptions were *a la carte* instead of comprehensive. Although truly comprehensive agricultural reform is foreign to both the United States Congress and the New Jersey State Legislature’s vernacular, it may be New Jersey’s last hope for maintaining a state of agricultural excellence. However, comprehensive reform in any area of law is extremely challenging, as it inevitably touches upon issues of affordability, job creation, ethics and morality, and the general lethargy of the bureaucratic process. Contrarily, in New Jersey’s case, comprehensive agriculture reform should not be so difficult.

As a starting point and from a purely economic perspective, as of 2018, New Jersey only has 9,900 farms currently in operation.¹⁸⁸ Although there is not an exact number of individuals labeled as “farmers,” New Jersey’s preeminent agriculture nonprofit, the New Jersey Farm Bureau, boasts that it advocates for 12,000 farm families who are involved in or support agriculture across the state.¹⁸⁹ Operating under the assumption that a “farm family” consists of two individuals and their children, this gives New Jersey a population of 24,000 individuals whose occupation could be considered that of a farmer (although this number may be overstated due to only one adult in the family working as a true farmer). Based upon this assumption, that makes the total number of farmers less than the total number of

withdrew membership, referring to it as a “gimmick.” *Id.* However, current Governor Phil Murphy reinstated New Jersey as a member in 2018. *Id.*

185. Right to Farm Act, N.J. STAT. ANN. § 4:1C-1 (West 2019).

186. Farmland Assessment Act of 1964, N.J. STAT. ANN. § 54:4-23.1 (West 2019).

187. Agriculture Retention and Development Act, N.J. STAT. ANN. § 4:1C-11 (West 2019).

188. *2018 State Agriculture Overview*, U.S. DEP’T OF AGRIC., https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=NEW%20JERSEY (last visited Jan. 6, 2020).

189. *Who We Are*, N.J. FARM BUREAU, <https://njfb.org/who-we-are/> (last visited Jan. 6, 2020).

employees of RWJBarnabas Health and Rutgers, respectively.¹⁹⁰ Further, with a total New Jersey population of 8,908,520,¹⁹¹ the proposed comprehensive reform would merely impact about .27% of New Jersey citizens.

Using Rutgers as a point of reference, as of 2018–2019, Rutgers' Fiscal Year budget was projected to be \$4.3 billion.¹⁹² In total, Rutgers budgeted to receive \$878,713,000 in state funding via appropriations and fringe benefits.¹⁹³ Comparatively, since the inception of the New Jersey Farmland Preservation Program, the program has cost New Jersey a total of roughly \$1.1 billion.¹⁹⁴ While the cost of New Jersey's other farmland-aiding regulations are not as readily discernable, this means that after fifty-six years of farmland preservation, the Farmland Preservation Program has only cost the State 20% more—when looking only at cost from a numeric perspective excluding inflation and the time value of money—than one year of funding towards Rutgers.

For further perspective, New Jersey's total estimated budget for 2019 was \$37.4 billion.¹⁹⁵ This means that Rutgers' funding from the State—for one year—was slightly above 2% of New Jersey's total budget. Comparatively, the Farmland Preservation Program—on an average yearly basis—costs nearly \$18 million, or .05% of New Jersey's total yearly budget as of 2019.¹⁹⁶ Assuming that the Right to Farm Act and the Farmland Assessment each cost the same amount on a yearly basis as the Farmland Preservation Program, roughly .15% of New Jersey's

190. *New Jersey Profile*, CHOOSE: N.J., <https://www.choosenj.com/stats-and-facts/new-jersey-profile/> (last visited Nov. 16, 2019). RWJBarnabas Health employees total 31,683 while Rutgers, The State University of New Jersey employees total 26,170. *Id.* The third largest employer in the state is Johnson & Johnson totaling 13,996 employees. *Id.*

191. *Id.*

192. RUTGERS, THE STATE UNIV. OF N.J., BD. OF GOVERNORS, RESOLUTION APPROVING FISCAL YEAR 2018–19 BUDGET (2018), <https://budget.rutgers.edu/sites/default/files/Board%20of%20Governors%27%20Approved%20University%20Budget%20for%20Fiscal%20Year%202018-2019.PDF>.

193. *Id.*

194. *New Jersey Farmland Preservation Program: Summary of Preserved Farmland*, NJ.GOV, <https://www.nj.gov/agriculture/sadc/farmpreserve/progress/stats/preservedsummary.pdf> (last updated Oct. 25, 2019). The exact amount spent as of February 5, 2019 on Farmland Preservation in its fifty-six years of existence is \$1,222,017,257 across all New Jersey counties. *Id.*

195. STATE OF N.J., OFFICE OF THE GOVERNOR, THE GOVERNOR'S FY 2019 BUDGET: BUDGET IN BRIEF 7 (2018), <https://www.nj.gov/treasury/omb/publications/19bib/BIB.pdf>.

196. I reached these numbers by first dividing the total cost of the New Jersey Farmland Preservation over 56 years, giving each year actual weight. This number totaled \$17,857,142 per year. I then divided this number by \$37.4 billion, reaching .05%. For all of these calculations I rounded up and to the nearest number, to avoid confusion.

total budget is aimed at aiding farmers,¹⁹⁷ far less than what the State apportions to Rutgers.

Another point of note for the practicality of comprehensive agricultural reform is that protecting and promoting agriculture is inherently job creating and anti-inflammatory from an ethical and moral perspective. Regarding job creation, according to a report by the United States Department of Agriculture (the “USDA”) and Purdue University, there will be 26,700 annual job openings nationwide in agriculture, ranging from farm labor to land use managers.¹⁹⁸ Certainly a portion of these agriculture jobs will be tied to “Big Ag” growth, but the well-known term “a rising tide lifts all boats” will ring true. And, of course, New Jersey will not be alone in experiencing an employment increase. The USDA report merely illuminates how much opportunity there is in the agricultural sector for growth. From the ethical and moral perspective, the likelihood of anti-farm activists protesting reform is quite low.¹⁹⁹

Based upon the above arguments, New Jersey legislators should not be hindered by fears of having to dramatically raise taxes to fund comprehensive agriculture reform or fight costly battles in the court of public opinion regarding the morality of proposed changes.²⁰⁰ Instead

197. In reality, the Right to Farm Act and the Farmland Assessment probably, on a dollar basis, costs less per year than the Farmland Preservation Program as the Farmland Preservation Program requires New Jersey to actively purchase land (assets) while the other two are merely legislative prescriptions/tax exemptions.

198. Jeff Daniels, *Agriculture: Job Growth to Boom over Next Five Years*, CNBC (May 20, 2015, 11:26 AM), <https://www.cnbc.com/2015/05/20/agriculture-fertile-ground-for-job-seekers.html>.

199. One of the largest anti-farm movements in America is People for the Ethical Treatment of Animals (PETA). However, their discontent with American farming practices includes factory farming, the practice of maximizing the number of animals contained in small spaces to be held for slaughter, in typically inhumane conditions. *Factory Farming: Misery for Animals*, PETA, <https://www.peta.org/issues/animals-used-for-food/factory-farming/> (last visited Jan. 6, 2020). However, New Jersey’s large agricultural outputs are crops, not animals, so PETA is unlikely to oppose such action. See *About NJDA*, N.J., DEP’T OF AGRIC., <https://www.nj.gov/agriculture/about/overview.html> (last visited Mar. 29, 2020).

200. I have purposely omitted mention of marijuana in this article, as while it is agricultural in nature, it is also far different than the traditional forms of farming currently practiced in New Jersey. Compare Kris Krane, *Cannabis Cultivation Will Be A Race To The Bottom*, FORBES (Apr. 25, 2018, 11:30 AM), <https://www.forbes.com/sites/kriskrane/2018/04/25/cannabis-cultivation-will-be-a-race-to-the-bottom/#409530254184> (describing the common cannabis cultivation and production regimes) with Lauren Wanko, *A Look Inside the Jersey Sweet Corn Business*, NJTV NEWS (July 13, 2017, 5:00 PM), <https://www.njtvonline.org/news/video/look-inside-jersey-sweet-corn-business/> (describing the basics of farming sweet corn in New Jersey). While the growth and sale of marijuana is certainly going to be the next big agriculture boom in the state, it will have its own legislative framework that will likely fall outside the scope of the laws mentioned throughout this piece due to its controversial nature. See Payton Guion, *Where Does N.J. Stand on Legal Weed As We Head into 2019?*, NJ.COM (Jan. 6, 2019), <https://www.nj.com/>

legislators should be able tout these reforms as job creating and impactful on an important corner of New Jersey's economy. Therefore, the only issue in effectuating agricultural change is actually making reform appear important enough for a legislator or a group thereof to desire to tackle.

2. Specific Policies

While advocating for comprehensive agricultural reform is the crux of this note, a thorough analysis of everything New Jersey needs to change would require another note or two in and of itself. Instead, the remainder of this note will look at agricultural regulations implemented by other states across the United States and propose their implementation in New Jersey to address the current weaknesses.

In order to preserve farmland, states have taken numerous approaches to maintain the status quo, such as New Jersey's Farmland Preservation Program.²⁰¹ However, one glaring weakness of New Jersey's strategy in preserving farmland is that it merely incentivizes preservation, instead of disincentivizing those who wish to interfere with farmland.²⁰² For example, while the Farmland Preservation program may be able to offer monetary incentives to preserve land, many times state-offered monetary compensation cannot compete with the price a real estate developer is willing to pay.²⁰³ Oregon has enacted a disincentive system via its "exclusive farm use zones" to combat this issue.²⁰⁴ These zones limit the activities that may be practiced within their borders, thus removing the possibility of receiving a large offer from a real estate developer or speculator.²⁰⁵ The downside of this approach, however, is that it prevents landowners from being able to cash-out when they find their land in a desirable location.

A byproduct of a decreasing amount of farmland in New Jersey is a decrease in the ability of aspiring farmers to acquire land.²⁰⁶ However,

marijuana/2019/01/where-does-nj-stand-on-legal-weed-as-we-head-into-2019.html.

201. See *Securing the Future*, *supra* note 116.

202. See generally Steven C. Bahls, *Preservation of Family Farms—The Way Ahead*, 45 *DRAKE L. REV.* 311 (1997).

203. Cf. Michael Williams, *Playing the Fields: As Developers Back off, Farmland Preservation Efforts Roll Along*, *S. JERSEY TIMES*, https://www.nj.com/salem/index.ssf/2011/11/playing_the_fields_as_develope.html (last updated Jan. 18, 2019). New Jersey's Farmland Preservation Program had its "golden age" when the economy was poor due to inability for development. *Id.* However, with a thriving economy, the opposite will inevitably occur.

204. *OR. REV. STAT. ANN.* § 215.203(1) (West 2019).

205. See *id.*

206. See Landis, *supra* note 164.

this issue is not isolated to New Jersey.²⁰⁷ States such as Iowa and Nebraska have implemented farmer loan programs.²⁰⁸ These programs link young farmers with old or retiring farmers or landowners who have land to spare.²⁰⁹ The end result is young farmers investing less to get off the ground, while being able begin their farming enterprise at a younger age.

Other states, instead of disincentivizing deviations from agriculture or promoting increased agriculture, have instead aimed at strengthening farm protections via right to farm laws.²¹⁰ However, a key attribute to a successful right to farm regime is flexibility—*i.e.*, allowing farmers to change their operation without losing the protection of the law.²¹¹ South Carolina’s right to farm legislation, considered to be the most flexible, uses a farm’s establishment date as a baseline for determining its protection.²¹² South Carolina’s regime thus permits a farm to expand in regard to facility size, scope of products, or even changing technologies while retaining protection.²¹³ Missouri and Indiana, while not as flexible as South Carolina, permit changes that amount to “reasonable expansion” and “significant change,” respectively, while staying within the protections of right to farm.²¹⁴ Colorado takes a different approach, in which it lists changes farmers are permitted to make in order to stay under right to farm.²¹⁵ Currently, New Jersey’s Right to Farm legislation most closely resembles that of Colorado, and lacks the flexibility of that of South Carolina, Indiana, and Missouri.²¹⁶

207. See Neil D. Hamilton, *Feeding Our Future: Six Philosophical Issues Shaping Agricultural Law*, 72 NEB. L. REV. 210, 218 (1993).

208. *Id.* at 219.

209. *Id.*

210. *Id.* at 220.

211. Garrett Chrostek, *A Critique of Vermont’s Right-To-Farm Law and Proposals for Better Protecting the State’s Agricultural Future*, 36 VT. L. REV. 233, 240 (2011).

212. S.C. CODE ANN. § 46-45-70 (2019); Chrostek, *supra* note 211.

213. S.C. CODE ANN. § 46-45-70; Chrostek, *supra* note 211.

214. MO. ANN. STAT. § 537.295 (West 2019); IND. CODE ANN. § 32-30-6-9-(d)(1) (West 2019); Chrostek, *supra* note 211, at 240–41.

215. COLO. REV. STAT. ANN. § 35-3.5-102 (West 2019); Chrostek, *supra* note 211, at 241. Colorado’s permitted changes include “changing ownership, briefly ceasing production, participating in a government program, adopting new technology, or changing the agricultural product produced . . .” *Id.*

216. See COLO. REV. STATE. ANN. § 35-3.5-102; IND. CODE ANN. § 32-30-6-9-(d)(1); MO. ANN. STAT. § 537.295; N.J. STAT. ANN. § 4:1C-9 (West 2019); S.C. CODE ANN. § 46-45-70; N.J. STATE AGRIC. DEV. COMM., *supra* note 26 at 5.

VI. CONCLUSION

Although New Jersey's Legislature has made an active effort to try and preserve New Jersey as the Garden State, the results have been less effective than desired. Legislation such as Right to Farm, the Farmland Assessment, and the Agriculture Retention and Development Acts have been very targeted in that they seek to ameliorate specific issues. However, in order for New Jersey to truly help protect farmland, New Jersey lawmakers must implement comprehensive agricultural reform that is ameliorative towards issues that farmers have historically faced, while also being forward facing in regard to issues that do not impact farmers on a day-to-day basis—but which impact the future of farming. While it is unlikely that the farming sector will completely disappear if New Jersey continues on its current path, it is likely that the Garden State moniker will become so separated from reality that New Jersey will have to adopt a new nickname in order to avoid irony.