

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 5434

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JUNE 21, 2021

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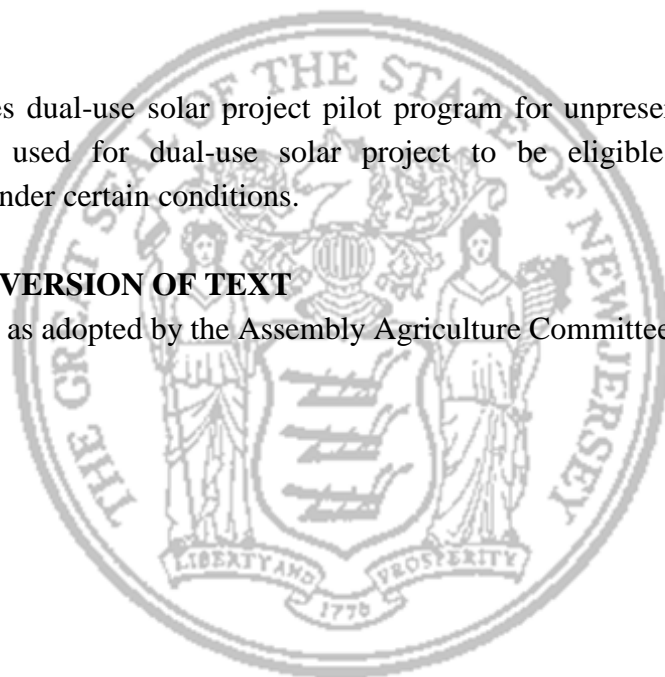
Assemblyman Karabinchak

SYNOPSIS

Establishes dual-use solar project pilot program for unpreserved farmland; allows land used for dual-use solar project to be eligible for farmland assessment under certain conditions.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Agriculture Committee.



(Sponsorship Updated As Of: 6/30/2021)

1 **AN ACT** concerning dual-use solar energy projects on unpreserved
2 farmland, supplementing P.L.1999, c.23 (C.48:3-49 et al.) and
3 P.L.1964, c.48 (C.54:4-23.1 et seq.), and amending P.L.2009,
4 c.213.

5

6

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

9

10 1. (New section) a. No later than 180 days after the date of
11 enactment of P.L. , c. (C.) (pending before the Legislature
12 as this bill), the Board of Public Utilities, in consultation with the
13 Secretary of Agriculture, shall adopt, pursuant to the
14 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
15 seq.), rules and regulations establishing a “Dual-Use Solar Energy
16 Pilot Program” to permit the construction, installation, and
17 operation of dual-use solar energy projects that are connected to the
18 distribution or transmission system owned or operated by a New
19 Jersey public utility or local government unit and located on
20 unpreserved farmland, while maintaining the affected land in active
21 agricultural or horticultural use.

22 b. The rules and regulations developed by the board, in
23 consultation with the Secretary of Agriculture, for the Dual-Use
24 Solar Energy Pilot Program shall establish:

25 (1) a 10 megawatt, as measured in direct current, capacity limit
26 for each individual dual-use solar energy project;

27 (2) annual capacity targets, such that the total capacity of all
28 dual-use solar energy projects approved under the pilot program
29 shall not exceed 200 megawatts, as measured in direct current, for
30 all dual-use solar energy projects approved under the pilot program,
31 except as otherwise provided pursuant to subsection e. of this
32 section;

33 (3) financial incentives available to dual-use solar energy
34 projects approved pursuant to the pilot program;

35 (4) a prohibition on siting a dual-use solar energy project on
36 prime agricultural soils and soils of Statewide importance, as
37 identified by the United States Department of Agriculture's Natural
38 Resources Conservation Service, which are located in Agricultural
39 Development Areas certified by the State Agriculture Development
40 Committee, unless the project is in association with a research study
41 undertaken in coordination with a New Jersey public research
42 institution of higher education, as approved by the board in
43 consultation with the Secretary of Agriculture;

44 (5) a prohibition on siting a dual-use solar energy project on any
45 of the following unless the board, in consultation with 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.

- 1 Department of Environmental Protection and the Secretary of
2 Agriculture, grants a waiver based on unique factors that make the
3 project consistent with the character of the specific parcel:
- 4 (a) land located within the preservation area of the pinelands
5 area, as designated in subsection b. of section 10 of P.L.1979, c.111
6 (C.13:18A-11);
 - 7 (b) land designated as forest area in the pinelands
8 comprehensive management plan adopted pursuant to P.L.1979,
9 c.111 (C.13:18A-1 et seq.);
 - 10 (c) land designated as freshwater wetlands, as defined pursuant
11 to P.L.1987, c.156 (C.13:9B-1 et seq.), or coastal wetlands, as
12 defined pursuant to P.L.1970, c.272 (C.13:9A-1 et seq.); or
 - 13 (d) land located within the Highlands preservation area as
14 designated in subsection b. of section 7 of P.L.2004, c.120
15 (C.13:20-7);
 - 16 (6) the requirement that the land on which the dual-use solar
17 energy project is installed continues to be actively devoted to
18 agricultural or horticultural use;
 - 19 (7) the requirement that the project comply with all applicable
20 federal, State, or local laws, rules, regulations, or ordinances;
 - 21 (8) an application process for owners who wish to develop a
22 dual-use solar energy project as part of the pilot program, including
23 such fees or deposits as shall be determined by the board; and
 - 24 (9) criteria, consistent with the provisions of paragraph (1) of
25 subsection c. of this section, for evaluating and scoring proposed
26 projects to determine which projects should be allowed to
27 participate in the pilot program and be awarded incentives pursuant
28 to paragraph (3) of this subsection.
- 29 c. (1) An owner proposing a dual-use solar energy project
30 shall submit an application to the board before constructing,
31 installing, or operating the project. The board shall consult with the
32 Secretary of Agriculture in the review and approval of all dual-use
33 solar energy projects under the Dual-Use Solar Energy Pilot
34 Program. In reviewing and making decisions on dual-use solar
35 energy projects, the board and secretary shall give consideration to
36 criteria including, but not limited to:
- 37 (a) proposals for monitoring the quality of agricultural or
38 horticultural use of the land;
 - 39 (b) the incentive level sought by the applicant;
 - 40 (c) geographic location;
 - 41 (d) interconnection planning;
 - 42 (e) proposals for minimizing negative impacts to farmland;
 - 43 (f) proposals to address decommissioning;
 - 44 (g) proposals for addressing stormwater runoff and other
45 environmental issues;
 - 46 (h) technical feasibility;
 - 47 (i) technical innovation;

1 (j) the quality of any research committed to during the
2 evaluation period; and

3 (k) any other criteria as may be deemed advisable by the board.

4 The review shall also consider whether the selected projects are
5 of varying sizes, and, collectively, involve diverse types of
6 agricultural and horticultural production. The board, in consultation
7 with the Secretary of Agriculture, shall, within 180 days after
8 receipt, approve, disapprove, or approve with conditions an
9 application submitted pursuant to this section.

10 (2) An owner who receives approval from the board pursuant to
11 this section shall obtain all necessary permits and other approvals as
12 may be required pursuant to federal, State, or local law, rule,
13 regulation, or ordinance, prior to the construction of the dual-use
14 solar energy project.

15 d. The Secretary of Agriculture may request that the board
16 suspend or revoke an approval issued pursuant to this section for a
17 violation of any term or condition of the approval or any provision
18 of this section.

19 e. The Dual-Use Solar Energy Pilot Program shall continue for
20 36 months after the adoption of the rules and regulations required
21 pursuant to subsection a. of this section, except that the board may
22 extend the pilot program by no more than two additional 12-month
23 periods if the board, in consultation with the Secretary of
24 Agriculture, determines that such extensions are necessary to
25 adequately evaluate the performance of the projects selected for
26 construction as part of the Dual-Use Solar Energy Pilot Program. If
27 the board extends the Dual-Use Solar Energy Pilot Program, it may
28 increase the total capacity limit of all projects under the program by
29 no more than 50 megawatts, as measured in direct current, per
30 additional 12-month period.

31 f. Notwithstanding any law, ordinance, rule, or regulation to
32 the contrary, a dual-use solar energy project approved pursuant to
33 this section shall be a permitted use within every municipality.

34 g. No later than 36 months, or no later than 48 or 60 months if
35 applicable due to extensions of the Dual-Use Solar Energy Pilot
36 Program pursuant to subsection e. of this section, after adoption of
37 the rules and regulations required pursuant to subsection a. of this
38 section, the board, in consultation with the Secretary of Agriculture,
39 shall adopt rules and regulations, pursuant to the "Administrative
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to convert
41 the Dual-Use Solar Energy Pilot Program to a permanent program
42 as part of the permanent successor to the solar incentive program
43 established pursuant to P.L. , c. (C.) (pending before the
44 Legislature as Senate Bill No. 2605 and Assembly Bill No. 4554 of
45 the 2020-2011 session). The rules and regulations for the
46 permanent program shall set forth standards for dual-use solar
47 energy projects that take into account the results of the pilot

1 program and any research studies on the efficacy of dual-use solar
2 energy in New Jersey, and shall include, but not be limited to:

3 (1) a capacity limit for individual dual-use solar energy projects;

4 (2) a total annual capacity limit;

5 (3) provisions to protect New Jersey's prime agricultural soils
6 and soils of Statewide importance, as identified by the United States
7 Department of Agriculture's Natural Resources Conservation
8 Service, which are located in Agricultural Development Areas
9 certified by the State Agriculture Development Committee, and
10 provisions to protect the State's agricultural and horticultural
11 diversity;

12 (4) standards for: installation and decommissioning techniques
13 that minimize negative impacts to farmland, which may include the
14 posting of a performance bond for decommissioning; impervious
15 coverage; and water management, including, but not limited to,
16 water recapture and filtration;

17 (5) provisions to ensure the continued active agricultural or
18 horticultural use of land on which dual-use solar energy projects are
19 installed;

20 (6) siting criteria and restrictions, which may differ from those
21 established pursuant to section 6 of P.L. , c. (C.) (pending
22 before the Legislature as Senate Bill No. 2605 and Assembly Bill
23 No. 4554 of the 2020-2011 session) to the extent necessary to
24 accomplish the purposes of the dual-use solar energy program; and

25 (7) an application process, including such fees, escrows, or
26 deposits as shall be determined by the board.

27 h. As used in this section:

28 "Dual-use solar energy project" means the energy generation
29 facilities, structures, and equipment for the production of electric
30 power from solar photovoltaic panels located on unreserved
31 farmland in agricultural or horticultural production that ensures the
32 continued simultaneous use of the land below and adjacent to the
33 panels for agricultural or horticultural production.

34 "Owner" means the owner of the unreserved farmland, the
35 owner of the dual-use solar energy project, or a representative duly
36 authorized to act on the owner's behalf.

37 "Preserved farmland" means the same as the term is defined in
38 section 4 of P.L.2009, c.213 (C.54:4-23.3c).

39 "Unreserved farmland" means any land that is valued, assessed,
40 and taxed pursuant to the "Farmland Assessment Act of 1964,"
41 P.L.1964, c.48 (C.54:4-23.1 et seq.), and is not preserved farmland.

42

43 2. (New section) a. No land used for a dual-use solar energy
44 project constructed, installed, and operated pursuant to the Dual-
45 Use Solar Energy Pilot Program established pursuant to section 1 of
46 P.L. , c. (C.) (pending before the Legislature as this bill)
47 shall be considered land in agricultural or horticultural use or
48 actively devoted to agricultural or horticultural use for the purposes

1 of the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-
2 23.1 et seq.), except as provided in this section.

3 b. Land used for a dual-use solar energy project constructed,
4 installed, and operated pursuant to section 1 of P.L. , c. (C.)
5 (pending before the Legislature as this bill) may be eligible for
6 valuation, assessment, and taxation pursuant to P.L.1964, c.48
7 (C.54:4-23.1 et seq.), provided that:

8 (1) the dual-use solar energy project is located on unreserved
9 farmland that is continuing to be in operation as a farm in the tax
10 year for which the valuation, assessment, and taxation pursuant to
11 P.L.1964, c.48 (C.54:4-23.1 et seq.) is applied for;

12 (2) in the tax year preceding the construction, installation, and
13 operation of the dual-use solar energy project, the acreage used for
14 the dual-use solar energy project was valued, assessed, and taxed as
15 land in agricultural or horticultural use;

16 (3) the land on which the dual-use solar energy project is
17 located continues to be actively devoted to agricultural and
18 horticultural use, and meets the income requirements set forth in
19 section 5 of P.L.1964, c.48 (C.54:4-23.5);

20 (4) the approval issued for the dual-use solar energy project by
21 the Board of Public Utilities pursuant to section 1 of
22 P.L. , c. (C.) (before the Legislature as this bill) has not
23 been suspended or revoked; and

24 (5) all other requirements of P.L.1964, c.48 (C.54:4-23.1 et seq.)
25 are met.

26 c. No generated energy from a dual-use solar energy project
27 shall be considered an agricultural or horticultural product, and no
28 income from any power sold from the dual-use solar energy project
29 may be considered income for eligibility for valuation, assessment,
30 and taxation of land pursuant to P.L.1964, c.48 (C.54:4-
31 23.1 et seq.).

32 d. Within one year after the date of enactment of
33 P.L. , c. (C.) (pending before the Legislature as this bill), the
34 Division of Taxation, in consultation with the Secretary of
35 Agriculture and the Board of Public Utilities, shall:

36 (1) adopt, pursuant to the “Administrative Procedure Act,”
37 P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as
38 may be necessary for the implementation and administration of this
39 section; and

40 (2) incorporate information concerning dual-use solar energy
41 projects into the guidelines provided, and the continuing education
42 course offered, to municipal tax assessors, county assessors, county
43 tax administrators, and other appropriate local government officials
44 pursuant to section 1 of P.L.2013, c.43 (C.54:4-23.3d).

45 e. As used in this section:

46 “Dual-use solar energy project” means the same as the term is
47 defined in section 1 of P.L. , c. (C.) (pending before the
48 Legislature as this bill).

1 “Preserved farmland” means the same as the term is defined in
2 section 4 of P.L.2009, c.213 (C.54:4-23.3c).

3 “Unpreserved farmland” means the same as the term is defined
4 in section 1 of P.L. , c. (C.) (pending before the Legislature
5 as this bill).

6

7 3. Section 4 of P.L.2009, c.213 (C.54:4-23.3c) is amended to
8 read as follows:

9 4. a. (1) No land used for biomass, solar, or wind energy
10 generation shall be considered land in agricultural or horticultural
11 use or actively devoted to agricultural or horticultural use for the
12 purposes of the “Farmland Assessment Act of 1964,” P.L.1964,
13 c.48 (C.54:4-23.1 et seq.), except as provided in this section or, in
14 the case of unpreserved farmland used for a dual-use solar energy
15 project, as provided in section 1 of P.L. , c. (C.) (pending
16 before the Legislature as this bill) .

17 (2) No generated energy from any source shall be considered an
18 agricultural or horticultural product.

19 b. Land used for biomass, solar, or wind energy generation
20 may be eligible for valuation, assessment and taxation pursuant to
21 P.L.1964, c.48 (C.54:4-23.1 et seq.), provided that:

22 (1) the biomass, solar, or wind energy generation facilities,
23 structures, and equipment were constructed, installed, and operated
24 on property that is part of an operating farm continuing to be in
25 operation as a farm in the tax year for which the valuation,
26 assessment and taxation pursuant to P.L.1964, c.48 (C.54:4-23.1 et
27 seq.) is applied for;

28 (2) in the tax year preceding the construction, installation, and
29 operation of the biomass, solar, or wind energy generation facilities,
30 structures, and equipment on an operating farm, the acreage used
31 for the biomass, solar, or wind energy generation facilities,
32 structures, and equipment was valued, assessed and taxed as land in
33 agricultural or horticultural use;

34 (3) the power or heat generated by the biomass, solar, or wind
35 energy generation facilities, structures, and equipment is used to
36 provide, either directly or indirectly but not necessarily exclusively,
37 power or heat to the farm or agricultural or horticultural operations
38 supporting the viability of the farm;

39 (4) the owner of the property has filed a conservation plan with
40 the soil conservation district, with provisions for compliance with
41 paragraph (5) of this subsection where applicable, to account for the
42 aesthetic, impervious coverage, and environmental impacts of the
43 construction, installation, and operation of the biomass, solar, or
44 wind energy generation facilities, structures, and equipment,
45 including, but not necessarily limited to, water recapture and
46 filtration, and the conservation plan has been approved by the
47 district;

1 (5) where solar energy generation facilities, structures, and
2 equipment are installed, the property under the solar panels is used
3 to the greatest extent practicable for the farming of shade crops or
4 other plants capable of being grown under such conditions, or for
5 pasture for grazing;

6 (6) the amount of acreage devoted to the biomass, solar, or wind
7 energy generation facilities, structures, and equipment does not
8 exceed a ratio of one to five acres, or portion thereof, of land
9 devoted to energy generation facilities, structures, and equipment
10 and land devoted to agricultural or horticultural operations;

11 (7) biomass, solar, or wind energy generation facilities,
12 structures, and equipment are constructed or installed on no more
13 than 10 acres of the farmland for which the owner of the property is
14 applying for valuation, assessment and taxation pursuant to
15 P.L.1964, c.48 (C.54:4-23.1 et seq.), and if power is being
16 generated, no more than two megawatts of power are generated on
17 the 10 acres or less; and

18 (8) for biomass energy generation, the owner of the property has
19 obtained the approval of the Department of Agriculture pursuant to
20 section 5 of P.L.2009, c.213 (C.4:1C-32.5).

21 c. No income from any power or heat sold from the biomass,
22 solar, or wind energy generation may be considered income for
23 eligibility for valuation, assessment and taxation of land pursuant to
24 the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-
25 23.1 et seq.), and, notwithstanding the provisions of that act, or any
26 rule or regulation adopted pursuant thereto, to the contrary, there
27 shall be no income requirement for property valued, assessed and
28 taxed pursuant to subsection b. of this section.

29 d. Notwithstanding any provision of this section, section 3 of
30 P.L.1964, c.48 (C.54:4-23.3), or section 4 of P.L.1964, c.48
31 (C.54:4-23.4) to the contrary, the construction, installation, or
32 operation of any biomass, solar, or wind energy generation facility,
33 structure, or equipment in the pinelands area, as defined and
34 regulated by the "Pinelands Protection Act," P.L.1979, c.111
35 (C.13:18A-1 et seq.), shall comply with the standards of P.L.1979,
36 c.111 and the comprehensive management plan for the pinelands
37 area adopted pursuant to P.L.1979, c.111.

38 e. The Division of Taxation, in consultation with the
39 Department of Agriculture, shall adopt, pursuant to the
40 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
41 1 et seq.), such rules and regulations as may be necessary for the
42 implementation and administration of this section.

43 f. For the purposes of this section:

44 "Biomass" means an agricultural crop, crop residue, or
45 agricultural byproduct that is cultivated, harvested, or produced on
46 the farm, or directly obtained from a farm where it was cultivated,
47 harvested, or produced, and which can be used to generate energy in
48 a sustainable manner, except with respect to preserved farmland,

1 “biomass” means the same as that term is defined in section 1 of
2 P.L.2009, c.213 (C.4:1C-32.4).

3 “Dual-use solar energy project” means the same as the term is
4 defined in section 1 of P.L. , c. (C.) (pending before the
5 Legislature as this bill).

6 “Land used for biomass, solar, or wind energy generation” means
7 the land upon which the biomass, solar, or wind energy generation
8 facilities, structures, and equipment are constructed, installed, and
9 operated. In the case of biomass energy generation, “land used for
10 biomass, solar, or wind energy generation” shall not mean the land
11 upon which agricultural or horticultural products used as fuel in the
12 biomass energy generation facility, structure, or equipment are
13 grown. “Land used for biomass, solar, or wind energy generation”
14 shall not include land used for a dual-use solar energy project.

15 “Preserved farmland” means land on which a development
16 easement was conveyed to, or retained by, the State Agriculture
17 Development Committee, a county agriculture development board,
18 or a qualifying tax exempt nonprofit organization pursuant to the
19 provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of
20 P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-
21 38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), sections 37 through
22 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or any
23 other State law enacted for farmland preservation purposes.

24 “Unpreserved farmland” means the same as the term is defined
25 in section 1 of P.L. , c. (C.) (pending before the Legislature
26 as this bill).

27 (cf: P.L.2009, c.213, s.4)

28

29 4. This act shall take effect immediately.