

**SENATE, No. 1538**

**STATE OF NEW JERSEY**  
**213th LEGISLATURE**

INTRODUCED MARCH 17, 2008

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**SYNOPSIS**

Allows solar and wind energy generation on preserved farms under certain circumstances and includes solar and wind energy generation on commercial farms as protected activities under "Right to Farm Act."

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning agriculture and solar and wind energy,  
2 supplementing P.L.1983, c.32 (C.4:1C-11 et seq.), and amending  
3 P.L.1983, c.31.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) As used in sections 1 through 4 of this act:

9 "Basic generation service provider" means the same as that term  
10 is defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51).

11 "Electric power supplier" means the same as that term is defined  
12 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51).

13 "Electric public utility" means the same as that term is defined  
14 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51).

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

23 "Qualifying tax exempt nonprofit organization" means the same  
24 as that term is defined pursuant to section 3 of P.L.1999, c.152  
25 (C.13:8C-3).

26  
27 2. (New section) a. Notwithstanding any law, rule or regulation  
28 to the contrary, a person who owns preserved farmland may  
29 construct, install, and operate solar or wind energy facilities and  
30 equipment on the farm, whether on the preserved portion of the  
31 farm or on any portion excluded from preservation, for the purpose  
32 of generating power or heat, and may make improvements to any  
33 agricultural, residential, or other building or structure on the land  
34 for that purpose, provided that the solar or wind energy generation  
35 facilities and equipment:

36 (1) do not interfere significantly with the use of the land for  
37 agricultural production, as determined by the committee;

38 (2) are owned by the landowner; and

39 (3) are used to provide power or heat to the farm, either directly  
40 or indirectly, or to reduce, through net metering or similar programs  
41 and systems, energy costs on the farm.

42 b. A landowner shall seek and obtain the approval of the  
43 committee before constructing, installing, and operating solar or  
44 wind energy facilities and equipment on the preserved farm as  
45 allowed pursuant to subsection a. of this section. The committee

**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 shall, within 90 days of receipt, approve, disapprove, or approve  
2 with conditions an application submitted for the purposes of  
3 subsection a. of this section. The decision of the committee on the  
4 application shall be based solely upon the criteria listed in  
5 subsection a. of this section.

6 c. No fee shall be charged of the landowner for review of an  
7 application submitted to, or issuance of a decision by, the  
8 committee pursuant to this section.

9 d. The committee may suspend or revoke an approval issued  
10 pursuant to this section for a violation of any term or condition of  
11 the approval or any provision of this section.

12

13 3. (New section) a. Notwithstanding any law, rule or regulation  
14 to the contrary, a person who owns preserved farmland may apply  
15 for, or authorize another person to apply for, a special permit from  
16 the committee pursuant to this section to allow the other person to:  
17 (1) construct, install, and operate solar or wind energy facilities and  
18 equipment on the farm, whether on the preserved portion of the  
19 farm or on any portion excluded from preservation, for the purpose  
20 of generating power or heat for sale to an electric public utility,  
21 electric power supplier, or basic generation service provider or to a  
22 public or private entity; or (2) make improvements to any  
23 agricultural, residential, or other building or structure on the land  
24 for that purpose.

25 b. The committee, in its sole discretion, may issue a special  
26 permit pursuant to this section if the development easement is  
27 owned by the committee. The committee and the board, in their  
28 joint discretion, may authorize the committee to issue a special  
29 permit pursuant to this section if the development easement is  
30 owned by a board. The committee and the qualifying tax exempt  
31 nonprofit organization, in their joint discretion, may authorize the  
32 committee to issue a special permit pursuant to this section if the  
33 development easement is owned by a qualifying tax exempt  
34 nonprofit organization.

35 c. A special permit may be issued pursuant to this section  
36 provided that:

37 (1) the land is a commercial farm as defined pursuant to section  
38 3 of P.L.1983, c.31 (C.4:1C-3);

39 (2) the permit is for a maximum of 20 years duration, subject to  
40 renewal;

41 (3) the solar or wind energy facilities and equipment do not  
42 interfere significantly with the use of the land for agricultural  
43 production, as determined by the committee;

44 (4) the solar or wind energy facilities and equipment do not have  
45 a significant adverse impact upon the soils, water resources, air  
46 quality, or other natural resources of the land or the surrounding  
47 area; and

1 (5) any necessary approvals that may be required by federal,  
2 State, or local law, rule, regulation, or ordinance are obtained.

3 d. The application fee for a special permit authorized pursuant to  
4 this section shall be \$1,000, payable to the committee regardless of  
5 whether or not a permit is issued. All proceeds from the collection  
6 of application fees by the committee pursuant to this section shall  
7 be dedicated to, and utilized by, the committee for farmland  
8 preservation purposes.

9 e. The committee may suspend or revoke a special permit issued  
10 pursuant to this section for a violation of any term or condition of  
11 the permit or any provision of this section.

12

13 4. a. The committee shall, within 60 days after the date of  
14 enactment of this act, develop guidelines for the implementation  
15 and administration of this act, including, but not limited to,  
16 procedures and standards for the filing, evaluation, and approval of  
17 permit applications pursuant to section 3 of this act, which seek to  
18 balance, as equally important concepts, the public interest in  
19 protecting farmland from further development as a means of  
20 preserving agriculture and agricultural structures and enhancing the  
21 beauty and character of the State and the local communities where  
22 farmland has been preserved with the public interest in providing  
23 support to sustain and strengthen the agricultural industry in the  
24 State.

25 b. (1) Every two years, the committee shall prepare a report on  
26 the implementation of this act. The report shall include a survey  
27 and inventory of all solar or wind energy facilities and equipment  
28 placed on preserved farmland in accordance with this act; the extent  
29 to which existing structures, such as barns, sheds, and silos, are  
30 used for those purposes, and how those structures have been  
31 modified therefor; the extent to which new structures, instead of  
32 existing structures, have been erected; and such other information  
33 as the committee deems useful.

34 (2) The report prepared pursuant to this subsection shall be  
35 transmitted to the Governor, the Legislature pursuant to section 2 of  
36 P.L.1991, c.164 (C.52:14-19.1), and the respective chairpersons of  
37 the Senate Economic Growth Committee, the Senate Environment  
38 Committee, the Assembly Agriculture and Natural Resources  
39 Committee, and the Assembly Environment and Solid Waste  
40 Committee or their designated successors. Copies of the report  
41 shall also be made available to the public upon request and free of  
42 charge, and shall be posted on the website of the State Agriculture  
43 Development Committee.

44 c. The committee shall adopt, pursuant to the "Administrative  
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and  
46 regulations necessary to carry out the purposes of this act.

- 1       5. Section 6 of P.L.1983, c.31 (C.4:1C-9) is amended to read as  
2 follows:
- 3       6. Notwithstanding the provisions of any municipal or county  
4 ordinance, resolution, or regulation to the contrary, the owner or  
5 operator of a commercial farm, located in an area in which, as of  
6 December 31, 1997 or thereafter, agriculture is a permitted use  
7 under the municipal zoning ordinance and is consistent with the  
8 municipal master plan, or which commercial farm is in operation as  
9 of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al.), and the  
10 operation of which conforms to agricultural management practices  
11 recommended by the committee and adopted pursuant to the  
12 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
13 (C.52:14B-1 et seq.), or whose specific operation or practice has  
14 been determined by the appropriate county board, or in a county  
15 where no county board exists, the committee, to constitute a  
16 generally accepted agricultural operation or practice, and all  
17 relevant federal or State statutes or rules and regulations adopted  
18 pursuant thereto, and which does not pose a direct threat to public  
19 health and safety may:
- 20       a. Produce agricultural and horticultural crops, trees and forest  
21 products, livestock, and poultry and other commodities as described  
22 in the Standard Industrial Classification for agriculture, forestry,  
23 fishing and trapping or, after the operative date of the regulations  
24 adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1),  
25 included under the corresponding classification under the North  
26 American Industry Classification System;
- 27       b. Process and package the agricultural output of the  
28 commercial farm;
- 29       c. Provide for the operation of a farm market, including the  
30 construction of building and parking areas in conformance with  
31 municipal standards;
- 32       d. Replenish soil nutrients and improve soil tilth;
- 33       e. Control pests, predators and diseases of plants and animals;
- 34       f. Clear woodlands using open burning and other techniques,  
35 install and maintain vegetative and terrain alterations and other  
36 physical facilities for water and soil conservation and surface water  
37 control in wetland areas;
- 38       g. Conduct on-site disposal of organic agricultural wastes;
- 39       h. Conduct agriculture-related educational and farm-based  
40 recreational activities provided that the activities are related to  
41 marketing the agricultural or horticultural output of the commercial  
42 farm; **[and]**
- 43       i. Engage in the generation of power or heat from solar or  
44 wind energy; and
- 45       j. Engage in any other agricultural activity as determined by the  
46 State Agriculture Development Committee and adopted by rule or  
47 regulation pursuant to the provisions of the "Administrative

1 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).  
2 (cf: P.L.2003, c.157, s.6)

3

4 6. This act shall take effect immediately.

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STATEMENT

8

9 This bill would allow a person who owns preserved farmland to  
10 construct, install, and operate solar or wind energy facilities and  
11 equipment on the farm, whether on the preserved portion of the  
12 farm or on any portion excluded from preservation, for the purpose  
13 of generating power or heat, and to make improvements to any  
14 agricultural, residential, or other building or structure on the land  
15 for that purpose, provided that the solar or wind energy generation  
16 facilities and equipment:

17 (1) do not interfere significantly with the use of the land for  
18 agricultural production, as determined by the State Agriculture  
19 Development Committee (SADC);

20 (2) are owned by the landowner; and

21 (3) are used to provide power or heat to the farm, either directly  
22 or indirectly, or to reduce, through net metering or similar programs  
23 and systems, energy costs on the farm.

24 The landowner would be required to obtain the prior approval of  
25 the SADC before constructing, installing, and operating the solar or  
26 wind energy facilities and equipment on the preserved farm. No fee  
27 would be charged of the landowner for review of an application  
28 submitted to, or issuance of a decision by, the SADC in these  
29 situations.

30 The bill also would allow a person who owns preserved farmland  
31 to apply for, or authorize another person to apply for, a special  
32 permit from the SADC to allow the other person to: (1) construct,  
33 install, and operate solar or wind energy facilities and equipment on  
34 the farm, whether on the preserved portion of the farm or on any  
35 portion excluded from preservation, for the purpose of generating  
36 power or heat for sale to an electric public utility, electric power  
37 supplier, or basic generation service provider or to a public or  
38 private entity; or (2) make improvements to any agricultural,  
39 residential, or other building or structure on the land for that  
40 purpose.

41 A special permit for that purpose may be issued by the SADC in  
42 such situations provided that:

43 (1) the land is a commercial farm as defined pursuant to the  
44 "Right to Farm Act";

45 (2) the permit is for a maximum of 20 years duration, subject to  
46 renewal;

1 (3) the solar or wind energy facilities and equipment do not  
2 interfere significantly with the use of the land for agricultural  
3 production, as determined by the SADC;

4 (4) the solar or wind energy facilities and equipment do not have  
5 a significant adverse impact upon the soils, water resources, air  
6 quality, or other natural resources of the land or the surrounding  
7 area; and

8 (5) any necessary approvals that may be required by federal,  
9 State, or local law, rule, regulation, or ordinance are obtained.

10 The application fee for such a special permit would be \$1,000,  
11 payable to the SADC regardless of whether or not a permit is  
12 issued. All proceeds from the collection of these application fees  
13 would be dedicated to, and utilized by, the SADC for farmland  
14 preservation purposes.

15 The bill would authorize the SADC to suspend or revoke a  
16 special permit or approval issued pursuant to this bill for a violation  
17 of any term or condition of the permit or approval or any provision  
18 of the bill.

19 The bill also would amend the "Right to Farm Act" to include  
20 power or heat generation from solar or wind energy as a generally  
21 accepted agricultural operation or practice for purposes of the  
22 protections afforded to farmers under that law.

23 Finally, the bill would charge the SADC with the responsibility  
24 of developing guidelines for the implementation and administration  
25 of the bill, including, but not limited to, procedures and standards  
26 for the filing, evaluation, and approval of special permit  
27 applications, which seek to balance, as equally important concepts,  
28 the public interest in protecting farmland from further development  
29 as a means of preserving agriculture and agricultural structures and  
30 enhancing the beauty and character of the State and the local  
31 communities where farmland has been preserved with the public  
32 interest in providing support to sustain and strengthen the State's  
33 agricultural industry. The SADC also would be charged with  
34 preparing a program report every two years.