

SENATE, No. 921

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JANUARY 19, 2010

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator JENNIFER BECK

District 12 (Mercer and Monmouth)

SYNOPSIS

Exempts solar panels from impervious surface or impervious cover designation.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning solar panels and impervious surfaces, and
2 amending P.L.2004, c.120, P.L.1968, c.285, P.L.1981, c.32, and
3 P.L.2009, c.82, and supplementing P.L.1975, c.291 (C.40:55D-1
4 et seq.).

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

8
9 1. Section 3 of P.L.2004, c.120 (C.13:20-3) is amended to read
10 as follows:

11 3. As used in this act:

12 "Agricultural or horticultural development" means construction
13 for the purposes of supporting common farmsite activities,
14 including but not limited to: the production, harvesting, storage,
15 grading, packaging, processing, and the wholesale and retail
16 marketing of crops, plants, animals, and other related commodities
17 and the use and application of techniques and methods of soil
18 preparation and management, fertilization, weed, disease, and pest
19 control, disposal of farm waste, irrigation, drainage and water
20 management, and grazing;

21 "Agricultural impervious cover" means agricultural or
22 horticultural buildings, structures, or facilities with or without
23 flooring, residential buildings, and paved areas, but shall not mean
24 temporary coverings or solar panels ;

25 "Agricultural or horticultural use" means the use of land for
26 common farmsite activities, including but not limited to: the
27 production, harvesting, storage, grading, packaging, processing, and
28 the wholesale and retail marketing of crops, plants, animals, and
29 other related commodities and the use and application of techniques
30 and methods of soil preparation and management, fertilization,
31 weed, disease, and pest control, disposal of farm waste, irrigation,
32 drainage and water management, and grazing;

33 "Application for development" means the application form and
34 all accompanying documents required for approval of a subdivision
35 plat, site plan, planned development, conditional use, zoning
36 variance, or direction of the issuance of a permit pursuant to the
37 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
38 or R.S.40:27-1 et seq., for any use, development, or construction;

39 "Capital improvement" means any facility for the provision of
40 public services with a life expectancy of three or more years, owned
41 and operated by or on behalf of the State or a political subdivision
42 thereof;

43 "Construction beyond site preparation" means having completed
44 the foundation for a building or structure, and does not include the
45 clearing, cutting, or removing of vegetation, bringing construction

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 materials to the site, or site grading or other earth work associated
2 with preparing a site for construction;

3 "Construction materials facility" means any facility or land upon
4 which the activities of production of ready mix concrete,
5 bituminous concrete, or class B recycling occurs;

6 "Council" means the Highlands Water Protection and Planning
7 Council established by section 4 of this act;

8 "Department" means the Department of Environmental
9 Protection;

10 "Development" means the same as that term is defined in section
11 3.1 of P.L.1975, c.291 (C.40:55D-4);

12 "Development regulation" means the same as that term is defined
13 in section 3.1 of P.L.1975, c.291 (C.40:55D-4);

14 "Disturbance" means the placement of impervious surface, the
15 exposure or movement of soil or bedrock, or the clearing, cutting,
16 or removing of vegetation;

17 "Environmental land use or water permit" means a permit,
18 approval, or other authorization issued by the Department of
19 Environmental Protection pursuant to the "Freshwater Wetlands
20 Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the "Water
21 Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.), the
22 "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.),
23 "The Realty Improvement Sewerage and Facilities Act (1954),"
24 P.L.1954, c.199 (C.58:11-23 et seq.), the "Water Quality Planning
25 Act," P.L.1977, c.75 (C.58:11A-1 et seq.), the "Safe Drinking
26 Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), or the "Flood
27 Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.);

28 "Facility expansion" means the expansion of the capacity of an
29 existing capital improvement in order that the improvement may
30 serve new development;

31 "Farm conservation plan" means a site specific plan that
32 prescribes needed land treatment and related conservation and
33 natural resource management measures, including forest
34 management practices, that are determined to be practical and
35 reasonable for the conservation, protection, and development of
36 natural resources, the maintenance and enhancement of agricultural
37 or horticultural productivity, and the control and prevention of
38 nonpoint source pollution;

39 "Farm management unit" means a parcel or parcels of land,
40 whether contiguous or noncontiguous, together with agricultural or
41 horticultural buildings, structures and facilities, producing
42 agricultural or horticultural products, and operated as a single
43 enterprise;

44 "Highlands open waters" means all springs, streams including
45 intermittent streams, wetlands, and bodies of surface water, whether
46 natural or artificial, located wholly or partially within the
47 boundaries of the Highlands Region, but shall not mean swimming
48 pools;

1 "Highlands Region" means that region so designated by
2 subsection a. of section 7 of this act;

3 "Immediate family member" means spouse, child, parent, sibling,
4 aunt, uncle, niece, nephew, first cousin, grandparent, grandchild,
5 father-in-law, mother-in-law, son-in-law, daughter-in-law,
6 stepparent, stepchild, stepbrother, stepsister, half brother, or half
7 sister, whether the individual is related by blood, marriage, or
8 adoption;

9 "Impact fee" means cash or in-kind payments required to be paid
10 by a developer as a condition for approval of a major subdivision or
11 major site plan for the developer's proportional share of the cost of
12 providing new or expanded reasonable and necessary public
13 improvements located outside the property limits of the subdivision
14 or development but reasonably related to the subdivision or
15 development based upon the need for the improvement created by,
16 and the benefits conferred upon, the subdivision or development;

17 "Impervious surface" means any structure, surface, or
18 improvement that reduces or prevents absorption of stormwater into
19 land, and includes porous paving, paver blocks, gravel, crushed
20 stone, decks, patios, elevated structures, and other similar
21 structures, surfaces, or improvements and excludes solar panels ;

22 "Individual unit of development" means a dwelling unit in the
23 case of a residential development, a square foot in the case of a non-
24 residential development, or any other standard employed by a
25 municipality for different categories of development as a basis upon
26 which to establish a service unit;

27 "Local government unit" means a municipality, county, or other
28 political subdivision of the State, or any agency, board,
29 commission, utilities authority or other authority, or other entity
30 thereof;

31 "Major Highlands development" means, except as otherwise
32 provided pursuant to subsection a. of section 30 of this act, (1) any
33 non-residential development in the preservation area; (2) any
34 residential development in the preservation area that requires an
35 environmental land use or water permit or that results in the
36 ultimate disturbance of one acre or more of land or a cumulative
37 increase in impervious surface by one-quarter acre or more; (3) any
38 activity undertaken or engaged in the preservation area that is not a
39 development but results in the ultimate disturbance of one-quarter
40 acre or more of forested area or that results in a cumulative increase
41 in impervious surface by one-quarter acre or more on a lot; or (4)
42 any capital or other project of a State entity or local government
43 unit in the preservation area that requires an environmental land use
44 or water permit or that results in the ultimate disturbance of one
45 acre or more of land or a cumulative increase in impervious surface
46 by one-quarter acre or more. Major Highlands development shall
47 not mean an agricultural or horticultural development or
48 agricultural or horticultural use in the preservation area;

1 "Mine" means any mine, whether on the surface or underground,
2 and any mining plant, material, equipment, or explosives on the
3 surface or underground, which may contribute to the mining or
4 handling of ore or other metalliferous or non-metalliferous
5 products. The term "mine" shall also include a quarry, sand pit,
6 gravel pit, clay pit, or shale pit;

7 "Mine site" means the land upon which a mine, whether active or
8 inactive, is located, for which the Commissioner of Labor and
9 Workforce Development has granted a certificate of registration
10 pursuant to section 4 of P.L.1954, c.197 (C.34:6-98.4) and the
11 boundary of which includes all contiguous parcels, except as
12 provided below, of property under common ownership or
13 management, whether located in one or more municipalities, as
14 such parcels are reflected by lot and block numbers or metes and
15 bounds, including any mining plant, material, or equipment.
16 "Contiguous parcels" as used in this definition of "mine site" shall
17 not include parcels for which mining or quarrying is not a permitted
18 use or for which mining or quarrying is not permitted as a prior
19 nonconforming use under the "Municipal Land Use Law,"
20 P.L.1975, c.291 (C.40:55D-1 et seq.);

21 "Office of Smart Growth" means the Office of State Planning
22 established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-
23 201);

24 "Planning area" means that portion of the Highlands Region not
25 included within the preservation area;

26 "Preservation area" means that portion of the Highlands Region
27 so designated by subsection b. of section 7 of this act;

28 "Public utility" means the same as that term is defined in
29 R.S.48:2-13;

30 "Recreation and conservation purposes" means the same as that
31 term is defined in section 3 of P.L.1999, c.152 (C.13:8C-3);

32 "Regional master plan" means the Highlands regional master
33 plan or any revision thereof adopted by the council pursuant to
34 section 8 of this act;

35 "Resource management systems plan" means a site specific
36 conservation system plan that (1) prescribes needed land treatment
37 and related conservation and natural resource management
38 measures, including forest management practices, for the
39 conservation, protection, and development of natural resources, the
40 maintenance and enhancement of agricultural or horticultural
41 productivity, and the control and prevention of nonpoint source
42 pollution, and (2) establishes criteria for resources sustainability of
43 soil, water, air, plants, and animals;

44 "Service area" means that area to be served by the capital
45 improvement or facility expansion as designated in the capital
46 improvement program adopted by a municipality under section 20
47 of P.L.1975, c.291 (C.40:55D-29);

1 "Service unit" means a standardized measure of consumption,
2 use, generation or discharge attributable to an individual unit of
3 development calculated in accordance with generally accepted
4 engineering or planning standards for a particular category of
5 capital improvements or facility expansions;

6 "Soil conservation district" means the same as that term is
7 defined in R.S. 4:24-2;

8 "Solar panel" means a panel or plate, or a canopy or array
9 thereof, that collects or captures solar energy or radiation to provide
10 energy or power, and includes nocturnal heat radiation, flat plate or
11 focusing solar collectors, or photovoltaic solar cells and excludes
12 the base or foundation of the panel, plate, canopy, or array;

13 "State Development and Redevelopment Plan" means the State
14 Development and Redevelopment Plan adopted pursuant to
15 P.L.1985, c.398 (C.52:18A-196 et al.);

16 "State entity" means any State department, agency, board,
17 commission, or other entity, district water supply commission,
18 independent State authority or commission, or bi-state entity;

19 "State Soil Conservation Committee" means the State Soil
20 Conservation Committee in the Department of Agriculture
21 established pursuant to R.S. 4:24-3;

22 "Temporary coverings" means permeable, woven and non-woven
23 geotextile fabrics that allow for water infiltration or impermeable
24 materials that are in contact with the soil and are used for no more
25 than two consecutive years; and

26 "Waters of the Highlands" means all springs, streams including
27 intermittent streams, and bodies of surface or ground water, whether
28 natural or artificial, located wholly or partially within the
29 boundaries of the Highlands Region, but shall not mean swimming
30 pools.

31 (cf: P.L.2004, c.120, s.3)

32

33 2. Section 8 of P.L.1968, c.285 (C.40:27-6.6) is amended to
34 read as follows:

35 8. The governing body of any county having a county planning
36 board may provide for the review of site plans for land development
37 along county roads or affecting county drainage facilities as
38 provided in subsection e. of this section and for the approval of
39 such development as hereinafter set forth and limited for the
40 purpose of assuring a safe and efficient county road system. Such
41 review and approval shall be in conformance with procedures and
42 standards adopted by resolution or ordinance as appropriate of the
43 governing body. Notice of the public hearing on a proposed
44 resolution or ordinance of the governing body establishing
45 procedures and standards to govern the review and regulation of
46 land development along county roads or affecting county drainage
47 facilities as provided in subsection e. of this section, and a copy of
48 such resolution or ordinance, shall be given by delivery or by

1 certified mail to the municipal clerk, secretary of the planning
2 board and secretary of the board of adjustment of each municipality
3 in the county at least 10 days prior to such hearing. These
4 procedures and standards shall be limited to:

5 a. The submission of a site plan, prior to the issuance of a
6 municipal building permit, drawn in accordance with standards in
7 the resolution or ordinance for any proposed land development,
8 excluding single family residential development but including
9 proposed commercial, industrial, multifamily structures containing
10 five or more units, or any other land development requiring off-
11 street parking area or producing surface runoff in excess of
12 standards set forth in the site plan review and approval resolution or
13 ordinance of the governing body.

14 b. The requirement of dedication of additional right-of-way in
15 accordance with the county master plan adopted by the county
16 planning board or an official county map adopted by the governing
17 body. Where by reason of special or unusual conditions said total
18 additional right-of-way is to be secured from just one side of an
19 existing road, only one-half of the additional right-of-way may be
20 required to be dedicated.

21 c. The requirement of physical improvements subject to
22 recommendations of the county engineer relating to the safety and
23 convenience of the traveling public, including drainage facilities, or
24 other highway and traffic design features as may be deemed
25 necessary on such county road or roads in accordance with the
26 engineering and planning standards established in the site plan
27 review and approval resolution or ordinance of the governing body.

28 d. The requirement of performance and payment guarantees
29 and procedures for the release of same, maintenance bonds of not
30 more than 2 years' duration from the date of acceptance of
31 improvements, cash contributions, and agreements specifying
32 minimum standards of construction for required improvements.
33 Procedures for, and limitations on the requirement of such
34 guarantees or cash contributions shall be governed by the provisions
35 of this act.

36 e. The requirement of adequate drainage facilities and
37 easements when, as determined by the county engineer in
38 accordance with county-wide standards, the proposed site plan will
39 cause storm water to drain either directly or indirectly to a county
40 road or through any drainage-way, structure, pipe, culvert or facility
41 for which the county is responsible for the construction,
42 maintenance or proper functioning.

43 Site plans for land development not along a county road that
44 include less than 1 acre of impervious surfaces are exempt from
45 county site plan review.

46 f. A site plan for land development that includes solar panels
47 shall not designate or deem, or calculate, solar panels as an

1 impervious surface or impervious cover, for the purposes of any
2 county site plan review.

3 As used in this subsection, “solar panel” means a panel or plate,
4 or a canopy or array thereof, that collects or captures solar energy
5 or radiation to provide energy or power, and includes nocturnal heat
6 radiation, flat plate or focusing solar collectors, and photovoltaic
7 solar cells, and excludes the base or foundation of a panel, plate,
8 canopy, or array.

9 (cf: P.L.1981, c.50, s.1)

10

11 3. Section 3 of P.L.1981, c.32 (C.40:55D-95) is amended to
12 read as follows:

13 3. A storm water management plan and a storm water
14 management ordinance or ordinances shall conform to all relevant
15 federal and State statutes, rules and regulations concerning storm
16 water management or flood control and shall be designed: a. to
17 reduce flood damage, including damage to life and property; b. to
18 minimize storm water runoff from any new land development where
19 such runoff will increase flood damage; c. to reduce soil erosion
20 from any development or construction project; d. to assure the
21 adequacy of existing and proposed culverts and bridges; e. to induce
22 water recharge into the ground where practical; f. to prevent, to the
23 greatest extent feasible, an increase in nonpoint pollution; g. to
24 maintain the integrity of stream channels for their biological
25 functions, as well as for drainage; and h. to minimize public safety
26 hazards at any storm water detention facilities constructed as part of
27 a subdivision or pursuant to a site plan. A storm water management
28 plan shall also include such structural changes and such additional
29 nonstructural measures and practices as may be necessary to
30 manage storm water. A storm water management plan and a storm
31 water management ordinance or ordinances shall permit solar
32 panels to be constructed and installed on a site. Solar panels shall
33 not be designated as, or determined to be, an impervious surface or
34 impervious cover.

35 For purposes of **[this act]** P.L.1981, c.32 (C.40:55D-93 et seq.):

36 **["nonpoint pollution"]** “Nonpoint pollution” means pollution
37 from any source other than from any discernible, confined and
38 discrete conveyance, and shall include, but not be limited to,
39 pollutants from agricultural, silvicultural, mining, construction,
40 subsurface disposal and urban runoff sources.

41 “Solar panel” means a panel or plate, or a canopy or array
42 thereof, that collects or captures solar energy or radiation to provide
43 energy or power, and includes nocturnal heat radiation, flat plate or
44 focusing solar collectors, and photovoltaic solar cells, and excludes
45 the base or foundation of a panel, plate, canopy, or array.

46 (cf: P.L.1991, c.194, s.1)

1 4. Section 4 of P.L.2009, c.82 (C.45:22A-46.6) is amended to
2 read as follows:

3 4. a. A developer seeking to change an age-restricted
4 development approval to a converted development approval shall
5 file an application with the approving board seeking an amendment
6 to the previously granted approvals requesting the authority to
7 develop the land as a converted development. At such time, the
8 developer shall also file a copy of said notice with the municipal
9 clerk of the municipality in which the development is located and
10 the developer shall provide notice prior to a hearing on the
11 application in the manner prescribed by section 7.1 of P.L.1975,
12 c.291 (C.40:55D-12).

13 (1) No application for an amended approval seeking the
14 authority to construct a converted development shall be considered
15 a "use variance" or other "'d' variance" application pursuant to
16 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70). Both
17 planning boards that initially granted approvals for the age-
18 restricted development and zoning boards of adjustment that
19 initially granted approvals for the age-restricted development shall
20 have the legal authority to grant amended approvals for a converted
21 development without the need to seek relief pursuant to subsection
22 d. of section 57 of P.L.1975, c.291 (C.40:55D-70), it being the
23 intent of this act that such converted developments are to be
24 considered permitted uses in the zoning district in which they are
25 located.

26 b. Applications seeking amended approval for a converted
27 development shall include documentation that all of the following
28 site improvement and infrastructure requirements have been met:

29 (1) the site meets the Residential Site Improvement Standards
30 parking requirement for the residential land uses in a converted
31 development as established pursuant to N.J.A.C.5:21-4.14 through -
32 4.16;

33 (2) the recreation improvements and other amenities to be
34 constructed on the site have been revised, as needed, to meet the
35 needs of a converted development;

36 (3) the water supply system is adequate, as determined pursuant
37 to N.J.A.C.5:21-5.1, to meet the needs of a converted development;

38 (4) the capacity of the sanitary sewer system is adequate to meet
39 the projected flow requirements of a converted development
40 pursuant to N.J.A.C.7:14A-23.3;

41 (5) if additional water supply or sewer capacity is needed and
42 the developer is unable to obtain additional supply or capacity, the
43 number of dwelling units in the development has been reduced
44 accordingly;

45 (6) if additional parking is needed, and the developer is unable
46 to provide the required parking, the number of dwelling units in the
47 development has been reduced accordingly; and

1 (7) if additional parking is provided and increases the amount of
2 impervious cover excluding solar panels, by more than one
3 percent, the storm water system calculations and improvements
4 have been revised accordingly. As used in this paragraph, “solar
5 panel” means a panel or plate, or a canopy or array thereof, that
6 collects or captures solar energy or radiation to provide energy or
7 power, and includes nocturnal heat radiation, flat plate or focusing
8 solar collectors, and photovoltaic solar cells, and excludes the base
9 or foundation of a panel, plate, canopy, or array.

10 c. If the approving board determines that the requirements of
11 P.L.2009, c.82 (C.45:22A-46.3 et seq.) have been satisfied, and the
12 conversion can be granted without substantial detriment to the
13 public good and will not substantially impair the intent and purpose
14 of the zone plan and zoning ordinance, the application for the
15 conversion shall be approved.

16 (cf: P.L.2009, c.82, s.4)

17
18 5. (New section) An ordinance requiring approval by the
19 planning board of either subdivisions or site plans, or both, shall not
20 include solar panels in any definition, designation, or calculation of
21 impervious surface or impervious cover.

22 As used in this section, “solar panel” means a panel or plate, or a
23 canopy or array thereof, that collects or captures solar energy or
24 radiation to provide energy or power, and includes nocturnal heat
25 radiation, flat plate or focusing solar collectors, and photovoltaic
26 solar cells, and excludes the base or foundation of a panel, plate,
27 canopy, or array.

28
29 6. This act shall take effect immediately.

30
31
32 STATEMENT

33
34 This bill would exempt solar panels from being designated as an
35 impervious surface or impervious cover, as it applies to the various
36 laws relating to municipal land use, stormwater management, and
37 the Highlands, including agricultural development therein.

38 By exempting solar panels from the definition of an impervious
39 surface, the bill would eliminate certain requirements and would
40 change calculations of impervious surfaces as they apply to various
41 development and management plans.

42 Under the bill, a solar panel is defined as a panel or plate, or a
43 canopy or array thereof, that collects or captures solar energy or
44 radiation to provide energy or power, and includes nocturnal heat
45 radiation, flat plate or focusing solar collectors, and photovoltaic
46 solar cells, and excludes the base or foundation of a panel, plate,
47 canopy, or array.

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11

1 This bill would amend: (1) P.L.2004, c.120, the “Highlands
2 Water Protection and Planning Act”; (2) P.L.1968, c.285, relating to
3 county site plan reviews; (3) P.L.1981, c.32, relating to storm water
4 management; and (4) P.L.2009, c.82 relating to age-restricted
5 community developments. The bill would additionally supplement
6 the “Municipal Land Use Law,” P.L.1975, c.291, to exclude solar
7 panels from being designated or deemed, or calculated, as
8 impervious surface or impervious cover.