

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 3484

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JUNE 15, 2021

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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

As reported by the Senate Budget and Appropriations Committee on June 21, 2021, with amendments.



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

8
9 1. (New section) a. No later than 180 days after the date of
10 enactment of P.L. , c. (C.) (pending before the Legislature as
11 this bill), the Board of Public Utilities, in consultation with the
12 Secretary of Agriculture, shall adopt, pursuant to the “Administrative
13 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
14 regulations establishing a “Dual-Use Solar Energy Pilot Program” to
15 permit the construction, installation, and operation of dual-use solar
16 energy projects ¹that are connected to the distribution or transmission
17 system owned or operated by a New Jersey public utility or local
18 government unit and located¹ on unpreserved farmland, while
19 maintaining the affected land in active agricultural or horticultural use.

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

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

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

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

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

41 (5) a prohibition on siting a dual-use solar energy project on any of
42 the following unless the board, in consultation with the Department of
43 Environmental Protection and the Secretary of Agriculture, grants a
44 waiver based on unique factors that make the project consistent with
45 the character of the specific parcel:

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SBA committee amendments adopted June 21, 2021.

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

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

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

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

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

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

30 g. No later than 36 months, or no later than 48 or 60 months if
31 applicable due to extensions of the Dual-Use Solar Energy Pilot
32 Program pursuant to subsection e. of this section, after adoption of the
33 rules and regulations required pursuant to subsection a. of this section,
34 the board, in consultation with the Secretary of Agriculture, shall adopt
35 rules and regulations, pursuant to the “Administrative Procedure Act,”
36 P.L.1968, c.410 (C.52:14B-1 et seq.), to convert the Dual-Use Solar
37 Energy Pilot Program to a permanent program as part of the permanent
38 successor to the solar incentive program established pursuant to
39 P.L. , c. (C.) (pending before the Legislature as Senate Bill
40 No. 2605 and Assembly Bill No. 4554 of the 2020-2011 session). The
41 rules and regulations for the permanent program shall set forth
42 standards for dual-use solar energy projects that take into account the
43 results of the pilot program and any research studies on the efficacy of
44 dual-use solar energy in New Jersey, and shall include, but not be
45 limited to:

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

47 (2) a total annual capacity limit;

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

7 (4) standards for: installation and decommissioning techniques
8 that minimize negative impacts to farmland, which may include the
9 posting of a performance bond for decommissioning; impervious
10 coverage; and water management, including, but not limited to, water
11 recapture and filtration;

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

15 (6) siting criteria and restrictions, which may differ from those
16 established pursuant to section 6 of P.L. , c. (C.) (pending
17 before the Legislature as Senate Bill No. 2605 and Assembly Bill No.
18 4554 of the 2020-2011 session) to the extent necessary to accomplish
19 the purposes of the dual-use solar energy program; and

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

22 h. As used in this section:

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

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

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

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

37
38 2. (New section) a. No land used for a dual-use solar energy
39 project constructed, installed, and operated pursuant to the Dual-
40 Use Solar Energy Pilot Program established pursuant to section 1 of
41 P.L. , c. (C.) (pending before the Legislature as this bill)
42 shall be considered land in agricultural or horticultural use or
43 actively devoted to agricultural or horticultural use for the purposes
44 of the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-
45 23.1 et seq.), except as provided in this section.

46 b. Land used for a dual-use solar energy project constructed,
47 installed, and operated pursuant to section 1 of P.L. , c. (C.)
48 (pending before the Legislature as this bill) may be eligible for

1 valuation, assessment, and taxation pursuant to P.L.1964, c.48
2 (C.54:4-23.1 et seq.), provided that:

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

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

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

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

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

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

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

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

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

40 e. As used in this section:

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

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

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

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

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

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

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

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

22 (2) in the tax year preceding the construction, installation, and
23 operation of the biomass, solar, or wind energy generation facilities,
24 structures, and equipment on an operating farm, the acreage used
25 for the biomass, solar, or wind energy generation facilities,
26 structures, and equipment was valued, assessed and taxed as land in
27 agricultural or horticultural use;

28 (3) the power or heat generated by the biomass, solar, or wind
29 energy generation facilities, structures, and equipment is used to
30 provide, either directly or indirectly but not necessarily exclusively,
31 power or heat to the farm or agricultural or horticultural operations
32 supporting the viability of the farm;

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

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

47 (6) the amount of acreage devoted to the biomass, solar, or wind
48 energy generation facilities, structures, and equipment does not

1 exceed a ratio of one to five acres, or portion thereof, of land
2 devoted to energy generation facilities, structures, and equipment
3 and land devoted to agricultural or horticultural operations;

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

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

14 c. No income from any power or heat sold from the biomass,
15 solar, or wind energy generation may be considered income for
16 eligibility for valuation, assessment and taxation of land pursuant to
17 the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-
18 23.1 et seq.), and, notwithstanding the provisions of that act, or any
19 rule or regulation adopted pursuant thereto, to the contrary, there
20 shall be no income requirement for property valued, assessed and
21 taxed pursuant to subsection b. of this section.

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

31 e. The Division of Taxation, in consultation with the
32 Department of Agriculture, shall adopt, pursuant to the
33 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
34 seq.), such rules and regulations as may be necessary for the
35 implementation and administration of this section.

36 f. For the purposes of this section:

37 “Biomass” means an agricultural crop, crop residue, or
38 agricultural byproduct that is cultivated, harvested, or produced on
39 the farm, or directly obtained from a farm where it was cultivated,
40 harvested, or produced, and which can be used to generate energy in
41 a sustainable manner, except with respect to preserved farmland,
42 “biomass” means the same as that term is defined in section 1 of
43 P.L.2009, c.213 (C.4:1C-32.4).

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

47 “Land used for biomass, solar, or wind energy generation” means
48 the land upon which the biomass, solar, or wind energy generation

1 facilities, structures, and equipment are constructed, installed, and
2 operated. In the case of biomass energy generation, “land used for
3 biomass, solar, or wind energy generation” shall not mean the land
4 upon which agricultural or horticultural products used as fuel in the
5 biomass energy generation facility, structure, or equipment are
6 grown. “Land used for biomass, solar, or wind energy generation”
7 shall not include land used for a dual-use solar energy project.

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

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

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

21

22 4. This act shall take effect immediately.