

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 3484**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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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**

Substitute as adopted by the Senate Environment and Energy Committee.



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  
11      as this bill), the Board of Public Utilities, in consultation with the  
12      Secretary of Agriculture, shall adopt, pursuant to the  
13      “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et  
14      seq.), rules and regulations establishing a “Dual-Use Solar Energy  
15      Pilot Program” to permit the construction, installation, and  
16      operation of dual-use solar energy projects on unpreserved  
17      farmland, while maintaining the affected land in active agricultural  
18      or horticultural use.

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

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

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

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

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

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

- 1 (a) land located within the preservation area of the pinelands  
2 area, 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  
5 comprehensive management plan adopted pursuant to P.L.1979,  
6 c.111 (C.13:18A-1 et seq.);
- 7 (c) land designated as freshwater wetlands, as defined pursuant  
8 to P.L.1987, c.156 (C.13:9B-1 et seq.), or coastal wetlands, as  
9 defined 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  
12 (C.13:20-7);
- 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  
19 dual-use solar energy project as part of the pilot program, including  
20 such 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  
24 participate in the pilot program and be awarded incentives pursuant  
25 to paragraph (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  
31 reviewing and making decisions on dual-use solar energy projects,  
32 the board and secretary shall give consideration to criteria  
33 including, but not limited 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  
46 evaluation 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  
2 of varying sizes, and, collectively, involve diverse types of  
3 agricultural and horticultural production. The board, in consultation  
4 with the Secretary of Agriculture, shall, within 180 days after  
5 receipt, approve, disapprove, or approve with conditions an  
6 application submitted 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  
11 solar 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  
15 of this section.

16 e. The Dual-Use Solar Energy Pilot Program shall continue for  
17 36 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  
21 Agriculture, determines that such extensions are necessary to  
22 adequately evaluate the performance of the projects selected for  
23 construction as part of the Dual-Use Solar Energy Pilot Program. If  
24 the board extends the Dual-Use Solar Energy Pilot Program, it may  
25 increase the total capacity limit of all projects under the program by  
26 no more than 50 megawatts, as measured in direct current, per  
27 additional 12-month period.

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

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

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

48 (2) a total annual capacity limit;

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

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

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

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

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

23 h. As used in this section:

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

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

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

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

38  
39 2. (New section) a. No land used for a dual-use solar energy  
40 project constructed, installed, and operated pursuant to the Dual-  
41 Use Solar Energy Pilot Program established pursuant to section 1 of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill)  
43 shall be considered land in agricultural or horticultural use or  
44 actively devoted to agricultural or horticultural use for the purposes  
45 of the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-  
46 23.1 et seq.), except as provided in this section.

47 b. Land used for a dual-use solar energy project constructed,  
48 installed, and operated pursuant to section 1 of P.L. , c. (C. )

1 (pending before the Legislature as this bill) may be eligible for  
2 valuation, assessment, and taxation pursuant to P.L.1964, c.48  
3 (C.54:4-23.1 et seq.), provided that:

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

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

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

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

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

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

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

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

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

41 e. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

46       (5) where solar energy generation facilities, structures, and  
47 equipment are installed, the property under the solar panels is used  
48 to the greatest extent practicable for the farming of shade crops or

1 other plants capable of being grown under such conditions, or for  
2 pasture for grazing;

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

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

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

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

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

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

40 f. For the purposes of this section:

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



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

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

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

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

25    (cf: P.L.2009, c.213, s.4)

26

27     4. This act shall take effect immediately.