

P.L. 2021, CHAPTER 170, *approved July 9, 2021*  
Assembly Committee Substitute for  
Assembly, No. 5434

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.

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

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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

**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 Resources Conservation Service, which are located in Agricultural  
2 Development Areas certified by the State Agriculture Development  
3 Committee, unless the project is in association with a research study  
4 undertaken in coordination with a New Jersey public research  
5 institution of higher education, as approved by the board in  
6 consultation with the Secretary of Agriculture;

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

12 (a) land located within the preservation area of the pinelands  
13 area, as designated in subsection b. of section 10 of P.L.1979, c.111  
14 (C.13:18A-11);

15 (b) land designated as forest area in the pinelands  
16 comprehensive management plan adopted pursuant to P.L.1979,  
17 c.111 (C.13:18A-1 et seq.);

18 (c) land designated as freshwater wetlands, as defined pursuant  
19 to P.L.1987, c.156 (C.13:9B-1 et seq.), or coastal wetlands, as  
20 defined pursuant to P.L.1970, c.272 (C.13:9A-1 et seq.); or

21 (d) land located within the Highlands preservation area as  
22 designated in subsection b. of section 7 of P.L.2004, c.120  
23 (C.13:20-7);

24 (6) the requirement that the land on which the dual-use solar  
25 energy project is installed continues to be actively devoted to  
26 agricultural or horticultural use;

27 (7) the requirement that the project comply with all applicable  
28 federal, State, or local laws, rules, regulations, or ordinances;

29 (8) an application process for owners who wish to develop a  
30 dual-use solar energy project as part of the pilot program, including  
31 such fees or deposits as shall be determined by the board; and

32 (9) criteria, consistent with the provisions of paragraph (1) of  
33 subsection c. of this section, for evaluating and scoring proposed  
34 projects to determine which projects should be allowed to  
35 participate in the pilot program and be awarded incentives pursuant  
36 to paragraph (3) of this subsection.

37 c. (1) An owner proposing a dual-use solar energy project  
38 shall submit an application to the board before constructing,  
39 installing, or operating the project. The board shall consult with the  
40 Secretary of Agriculture in the review and approval of all dual-use  
41 solar energy projects under the Dual-Use Solar Energy Pilot  
42 Program. In reviewing and making decisions on dual-use solar  
43 energy projects, the board and secretary shall give consideration to  
44 criteria including, but not limited to:

45 (a) proposals for monitoring the quality of agricultural or  
46 horticultural use of the land;

47 (b) the incentive level sought by the applicant;

48 (c) geographic location;

- 1 (d) interconnection planning;
- 2 (e) proposals for minimizing negative impacts to farmland;
- 3 (f) proposals to address decommissioning;
- 4 (g) proposals for addressing stormwater runoff and other
- 5 environmental issues;
- 6 (h) technical feasibility;
- 7 (i) technical innovation;
- 8 (j) the quality of any research committed to during the
- 9 evaluation period; and
- 10 (k) any other criteria as may be deemed advisable by the board.

11 The review shall also consider whether the selected projects are  
12 of varying sizes, and, collectively, involve diverse types of  
13 agricultural and horticultural production. The board, in consultation  
14 with the Secretary of Agriculture, shall, within 180 days after  
15 receipt, approve, disapprove, or approve with conditions an  
16 application submitted pursuant to this section.

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

22 d. The Secretary of Agriculture may request that the board  
23 suspend or revoke an approval issued pursuant to this section for a  
24 violation of any term or condition of the approval or any provision  
25 of this section.

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

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

41 g. No later than 36 months, or no later than 48 or 60 months if  
42 applicable due to extensions of the Dual-Use Solar Energy Pilot  
43 Program pursuant to subsection e. of this section, after adoption of  
44 the rules and regulations required pursuant to subsection a. of this  
45 section, the board, in consultation with the Secretary of Agriculture,  
46 shall adopt rules and regulations, pursuant to the “Administrative  
47 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to convert  
48 the Dual-Use Solar Energy Pilot Program to a permanent program

1 as part of the permanent successor to the solar incentive program  
2 established pursuant to P.L. , c. (C. ) (pending before the  
3 Legislature as Senate Bill No. 2605 and Assembly Bill No. 4554 of  
4 the 2020-2011 session). The rules and regulations for the  
5 permanent program shall set forth standards for dual-use solar  
6 energy projects that take into account the results of the pilot  
7 program and any research studies on the efficacy of dual-use solar  
8 energy in New Jersey, and shall include, but not be limited to:

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

10 (2) a total annual capacity limit;

11 (3) provisions to protect New Jersey's prime agricultural soils  
12 and soils of Statewide importance, as identified by the United States  
13 Department of Agriculture's Natural Resources Conservation  
14 Service, which are located in Agricultural Development Areas  
15 certified by the State Agriculture Development Committee, and  
16 provisions to protect the State's agricultural and horticultural  
17 diversity;

18 (4) standards for: installation and decommissioning techniques  
19 that minimize negative impacts to farmland, which may include the  
20 posting of a performance bond for decommissioning; impervious  
21 coverage; and water management, including, but not limited to,  
22 water recapture and filtration;

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

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

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

33 h. As used in this section:

34 "Dual-use solar energy project" means the energy generation  
35 facilities, structures, and equipment for the production of electric  
36 power from solar photovoltaic panels located on unpreserved  
37 farmland in agricultural or horticultural production that ensures the  
38 continued simultaneous use of the land below and adjacent to the  
39 panels for agricultural or horticultural production.

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

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

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

1       2. (New section) a. No land used for a dual-use solar energy  
2 project constructed, installed, and operated pursuant to the Dual-  
3 Use Solar Energy Pilot Program established pursuant to section 1 of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill)  
5 shall be considered land in agricultural or horticultural use or  
6 actively devoted to agricultural or horticultural use for the purposes  
7 of the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-  
8 23.1 et seq.), except as provided in this section.

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

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

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

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

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

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

32       c. No generated energy from a dual-use solar energy project  
33 shall be considered an agricultural or horticultural product, and no  
34 income from any power sold from the dual-use solar energy project  
35 may be considered income for eligibility for valuation, assessment,  
36 and taxation of land pursuant to P.L.1964, c.48 (C.54:4-  
37 23.1 et seq.).

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

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

46       (2) incorporate information concerning dual-use solar energy  
47 projects into the guidelines provided, and the continuing education  
48 course offered, to municipal tax assessors, county assessors, county

1 tax administrators, and other appropriate local government officials  
2 pursuant to section 1 of P.L.2013, c.43 (C.54:4-23.3d).

3 e. As used in this section:

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

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

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

12  
13 3. Section 4 of P.L.2009, c.213 (C.54:4-23.3c) is amended to  
14 read as follows:

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

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

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

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

34 (2) in the tax year preceding the construction, installation, and  
35 operation of the biomass, solar, or wind energy generation facilities,  
36 structures, and equipment on an operating farm, the acreage used  
37 for the biomass, solar, or wind energy generation facilities,  
38 structures, and equipment was valued, assessed and taxed as land in  
39 agricultural or horticultural use;

40 (3) the power or heat generated by the biomass, solar, or wind  
41 energy generation facilities, structures, and equipment is used to  
42 provide, either directly or indirectly but not necessarily exclusively,  
43 power or heat to the farm or agricultural or horticultural operations  
44 supporting the viability of the farm;

45 (4) the owner of the property has filed a conservation plan with  
46 the soil conservation district, with provisions for compliance with  
47 paragraph (5) of this subsection where applicable, to account for the  
48 aesthetic, impervious coverage, and environmental impacts of the

1 construction, installation, and operation of the biomass, solar, or  
2 wind energy generation facilities, structures, and equipment,  
3 including, but not necessarily limited to, water recapture and  
4 filtration, and the conservation plan has been approved by the  
5 district;

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

11 (6) the amount of acreage devoted to the biomass, solar, or wind  
12 energy generation facilities, structures, and equipment does not  
13 exceed a ratio of one to five acres, or portion thereof, of land  
14 devoted to energy generation facilities, structures, and equipment  
15 and land devoted to agricultural or horticultural operations;

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

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

26 c. No income from any power or heat sold from the biomass,  
27 solar, or wind energy generation may be considered income for  
28 eligibility for valuation, assessment and taxation of land pursuant to  
29 the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-  
30 23.1 et seq.), and, notwithstanding the provisions of that act, or any  
31 rule or regulation adopted pursuant thereto, to the contrary, there  
32 shall be no income requirement for property valued, assessed and  
33 taxed pursuant to subsection b. of this section.

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

43 e. The Division of Taxation, in consultation with the  
44 Department of Agriculture, shall adopt, pursuant to the  
45 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
46 1 et seq.), such rules and regulations as may be necessary for the  
47 implementation and administration of this section.

48 f. For the purposes of this section:

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

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

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

20 “Preserved farmland” means land on which a development  
21 easement was conveyed to, or retained by, the State Agriculture  
22 Development Committee, a county agriculture development board,  
23 or a qualifying tax exempt nonprofit organization pursuant to the  
24 provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of  
25 P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-  
26 38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), sections 37 through  
27 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or any  
28 other State law enacted for farmland preservation purposes.

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

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

33  
34 4. This act shall take effect immediately.  
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39 Establishes dual-use solar project pilot program for unpreserved  
40 farmland; allows land used for dual-use solar project to be eligible  
41 for farmland assessment under certain conditions.