

## CHAPTER 170

**AN ACT** concerning dual-use solar energy projects on unpreserved farmland, supplementing P.L.1999, c.23 (C.48:3-49 et al.) and P.L.1964, c.48 (C.54:4-23.1 et seq.), and amending P.L.2009, c.213.

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

C.48:3-87.13 Rules, regulations for “Dual-Use Solar Energy Pilot Program.”

1. a. No later than 180 days after the date of enactment of P.L.2021, c.170 (C.48:3-87.13 et al.), the Board of Public Utilities, in consultation with the Secretary of Agriculture, shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing a “Dual-Use Solar Energy Pilot Program” to permit the construction, installation, and operation of dual-use solar energy projects that are connected to the distribution or transmission system owned or operated by a New Jersey public utility or local government unit and located on unpreserved farmland, while maintaining the affected land in active agricultural or horticultural use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) proposals for monitoring the quality of agricultural or horticultural use of the land;
- (b) the incentive level sought by the applicant;
- (c) geographic location;
- (d) interconnection planning;
- (e) proposals for minimizing negative impacts to farmland;
- (f) proposals to address decommissioning;
- (g) proposals for addressing stormwater runoff and other environmental issues;
- (h) technical feasibility;
- (i) technical innovation;
- (j) the quality of any research committed to during the evaluation period; and
- (k) any other criteria as may be deemed advisable by the board.

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

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

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

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

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

g. No later than 36 months, or no later than 48 or 60 months if applicable due to extensions of the Dual-Use Solar Energy Pilot Program pursuant to subsection e. of this section, after adoption of the rules and regulations required pursuant to subsection a. of this section, the board, in consultation with the Secretary of Agriculture, shall adopt rules and regulations, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to convert the Dual-Use Solar Energy Pilot Program to a permanent program as part of the permanent successor to the solar incentive program established pursuant to P.L.2021, c.169 (C.48:3-114 et al.). The rules and regulations for the permanent program shall set forth standards for dual-use solar energy projects that take into account the results of the pilot program and any research studies on the efficacy of dual-use solar energy in New Jersey, and shall include, but not be limited to:

- (1) a capacity limit for individual dual-use solar energy projects;
- (2) a total annual capacity limit;
- (3) provisions to protect New Jersey’s prime agricultural soils and soils of Statewide importance, as identified by the United States Department of Agriculture’s Natural Resources Conservation Service, which are located in Agricultural Development Areas certified by the State Agriculture Development Committee, and provisions to protect the State’s agricultural and horticultural diversity;
- (4) standards for: installation and decommissioning techniques that minimize negative impacts to farmland, which may include the posting of a performance bond for decommissioning; impervious coverage; and water management, including, but not limited to, water recapture and filtration;
- (5) provisions to ensure the continued active agricultural or horticultural use of land on which dual-use solar energy projects are installed;
- (6) siting criteria and restrictions, which may differ from those established pursuant to section 6 of P.L.2021, c.169 (C.48:3-119) to the extent necessary to accomplish the purposes of the dual-use solar energy program; and
- (7) an application process, including such fees, escrows, or deposits as shall be determined by the board.

h. As used in this section:

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

“Owner” means the owner of the unpreserved farmland, the owner of the dual-use solar energy project, or a representative duly authorized to act on the owner’s behalf.

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

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

C.54:4-23.3e Land used not considered in agricultural, horticultural use.

2. a. No land used for a dual-use solar energy project constructed, installed, and operated pursuant to the Dual-Use Solar Energy Pilot Program established pursuant to section 1 of P.L.2021, c.170 (C.48:3-87.13) shall be considered land in agricultural or horticultural use or actively devoted to agricultural or horticultural use for the purposes of

the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-23.1 et seq.), except as provided in this section.

b. Land used for a dual-use solar energy project constructed, installed, and operated pursuant to section 1 of P.L.2021, c.170 (C.48:3-87.13) may be eligible for valuation, assessment, and taxation pursuant to P.L.1964, c.48 (C.54:4-23.1 et seq.), provided that:

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

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

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

(4) the approval issued for the dual-use solar energy project by the Board of Public Utilities pursuant to section 1 of P.L.2021, c.170 (C.48:3-87.13) has not been suspended or revoked; and

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

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

d. Within one year after the date of enactment of P.L.2021, c.170 (C.48:3-87.13 et al.), the Division of Taxation, in consultation with the Secretary of Agriculture and the Board of Public Utilities, shall:

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

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

e. As used in this section:

“Dual-use solar energy project” means the same as the term is defined in section 1 of P.L.2021, c.170 (C.48:3-87.13).

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

“Unpreserved farmland” means the same as the term is defined in section 1 of P.L.2021, c.170 (C.48:3-87.13).

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

C.54:4-23.3c Land use for taxation purposes.

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

for a dual-use solar energy project, as provided in section 1 of P.L.2021, c.170 (C.48:3-87.13).

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

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

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

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

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

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

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

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

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

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

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

d. Notwithstanding any provision of this section, section 3 of P.L.1964, c.48 (C.54:4-23.3), or section 4 of P.L.1964, c.48 (C.54:4-23.4) to the contrary, the construction,

installation, or operation of any biomass, solar, or wind energy generation facility, structure, or equipment in the pinelands area, as defined and regulated by the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.), shall comply with the standards of P.L.1979, c.111 and the comprehensive management plan for the pinelands area adopted pursuant to P.L.1979, c.111.

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

f. For the purposes of this section:

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

“Dual-use solar energy project” means the same as the term is defined in section 1 of P.L.2021, c.170 (C.48:3-87.13).

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

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

“Unpreserved farmland” means the same as the term is defined in section 1 of P.L.2021, c.170 (C.48:3-87.13).

4. This act shall take effect immediately.

Approved July 9, 2021.