

[Second Reprint]

SENATE, No. 1538

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MARCH 17, 2008

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

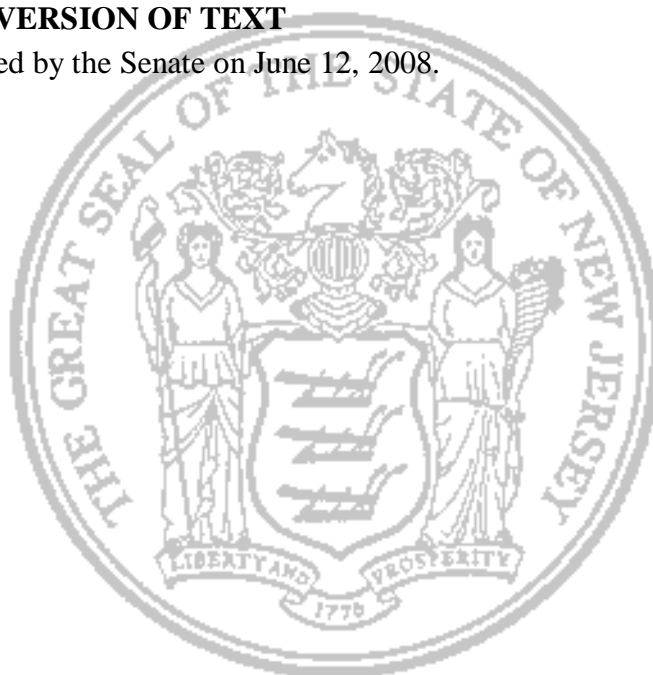
District 16 (Morris and Somerset)

SYNOPSIS

Allows solar and wind energy generation on preserved farms under certain circumstances, and includes solar and wind energy generation as agricultural use for farmland assessment purposes and as protected activity under “Right to Farm Act.”

CURRENT VERSION OF TEXT

As amended by the Senate on June 12, 2008.



1 AN ACT concerning agriculture and solar and wind energy,
2 'amending and'¹ supplementing P.L.1983, c.32 (C.4:1C-11 et
3 seq.), and amending P.L.1983, c.31 ¹and P.L.1964, c.48¹ .
4

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

8 1. (New section) As used in sections 1 through 4 of this act:
9 "Basic generation service provider" means the same as that term
10 is defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51).

11 "Electric power supplier" means the same as that term is defined
12 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51).

13 "Electric public utility" means the same as that term is defined
14 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51).

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

23 "Qualifying tax exempt nonprofit organization" means the same
24 as that term is defined pursuant to section 3 of P.L.1999, c.152
25 (C.13:8C-3).
26

27 2. (New section) a. Notwithstanding any law, rule or
28 regulation to the contrary, a person who owns preserved farmland
29 may construct, install, and operate solar or wind energy facilities
30 and equipment on the farm, whether on the preserved portion of the
31 farm or on any portion excluded from preservation, for the purpose
32 of generating power or heat, and may make improvements to any
33 agricultural, residential, or other building or structure on the land
34 for that purpose, provided that the solar or wind energy generation
35 facilities and equipment:

36 (1) **[(1)]** ¹do not interfere significantly with the use of the land for
37 agricultural production, as determined by the committee;

38 (2) ¹are owned by the landowner; and

39 **[(3)]** (2)¹are used to provide power or heat to the farm, either
40 directly or indirectly, or to reduce, through net metering or similar
41 programs and systems, energy costs on the farm.

42 b. A landowner shall seek and obtain the approval of the
43 committee before constructing, installing, and operating solar or

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:

¹Senate SEG committee amendments adopted June 9, 2008.

²Senate floor amendments adopted June 12, 2008.

1 wind energy facilities and equipment on the preserved farm as
2 allowed pursuant to subsection a. of this section. The committee
3 shall, within 90 days of receipt, approve, disapprove, or approve
4 with conditions an application submitted for the purposes of
5 subsection a. of this section. The decision of the committee on the
6 application shall be based solely upon the criteria listed in
7 subsection a. of this section.

8 c. No fee shall be charged of the landowner for review of an
9 application submitted to, or issuance of a decision by, the
10 committee pursuant to this section.

11 d. The committee may suspend or revoke an approval issued
12 pursuant to this section for a violation of any term or condition of
13 the approval or any provision of this section.

14 ¹e. The committee, in conjunction with the Department of
15 Environmental Protection and the Department of Agriculture, shall
16 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
17 c.410 (C.52:14B-1 et seq.), rules and regulations prescribing
18 standards concerning impervious cover which may be permitted in
19 connection with solar and wind energy generation facilities and
20 equipment authorized to be constructed, installed, and operated on
21 lands pursuant to this section.¹

22

23 3. (New section) a. Notwithstanding any law, rule or
24 regulation to the contrary, a person who owns preserved farmland
25 may apply for, or authorize another person to apply for, a special
26 permit from the committee pursuant to this section to allow the
27 other person to: (1) construct, install, and operate solar or wind
28 energy facilities and equipment on the farm, whether on the
29 preserved portion of the farm or on any portion excluded from
30 preservation, for the purpose of generating power or heat for sale to
31 an electric public utility, electric power supplier, or basic generation
32 service provider or to a public or private entity; or (2) make
33 improvements to any agricultural, residential, or other building or
34 structure on the land for that purpose.

35 b. The committee, in its sole discretion, may issue a special
36 permit pursuant to this section if the development easement is
37 owned by the committee. The committee and the board, in their
38 joint discretion, may authorize the committee to issue a special
39 permit pursuant to this section if the development easement is
40 owned by a board. The committee and the qualifying tax exempt
41 nonprofit organization, in their joint discretion, may authorize the
42 committee to issue a special permit pursuant to this section if the
43 development easement is owned by a qualifying tax exempt
44 nonprofit organization.

45 c. A special permit may be issued pursuant to this section
46 provided that:

47 (1) the land is a commercial farm as defined pursuant to section
48 3 of P.L.1983, c.31 (C.4:1C-3);

1 (2) the permit is for a maximum of 20 years duration, subject to
2 renewal;

3 (3) ~~the solar or wind energy facilities and equipment do not~~
4 ~~interfere significantly with the use of the land for agricultural~~
5 ~~production, as determined by the committee;~~

6 (4)¹ the solar or wind energy facilities and equipment do not
7 have a significant adverse impact upon the soils, water resources,
8 air quality, or other natural resources of the land or the surrounding
9 area; and

10 ~~[(5)] (4)~~¹ any necessary approvals that may be required by
11 federal, State, or local law, rule, regulation, or ordinance are
12 obtained.

13 d. The application fee for a special permit authorized pursuant
14 to this section shall be \$1,000, payable to the committee regardless
15 of whether or not a permit is issued. All proceeds from the
16 collection of application fees by the committee pursuant to this
17 section shall be dedicated to, and utilized by, the committee for
18 farmland preservation purposes.

19 e. The committee may suspend or revoke a special permit
20 issued pursuant to this section for a violation of any term or
21 condition of the permit or any provision of this section.

22 ¹f. The committee, in conjunction with the Department of
23 Environmental Protection and the Department of Agriculture, shall
24 adopt, pursuant to the “Administrative Procedure Act,” P.L.1968,
25 c.410 (C.52:14B-1 et seq.), rules and regulations prescribing
26 standards concerning impervious cover which may be permitted in
27 connection with solar and wind energy generation facilities and
28 equipment authorized to be constructed, installed, and operated on
29 lands pursuant to this section.¹

30

31 4. a. The committee shall, within 60 days after the date of
32 enactment of this act, develop guidelines for the implementation
33 and administration of this act, including, but not limited to,
34 procedures and standards for the filing, evaluation, and approval of
35 permit applications pursuant to section 3 of this act, which seek to
36 balance, as equally important concepts, the public interest in
37 protecting farmland from further development as a means of
38 preserving agriculture and agricultural structures and enhancing the
39 beauty and character of the State and the local communities where
40 farmland has been preserved with the public interest in providing
41 support to sustain and strengthen the agricultural industry in the
42 State.

43 b. (1) Every two years, the committee shall prepare a report on
44 the implementation of this act. The report shall include a survey
45 and inventory of all solar or wind energy facilities and equipment
46 placed on preserved farmland in accordance with this act; the extent
47 to which existing structures, such as barns, sheds, and silos, are

1 used for those purposes, and how those structures have been
2 modified therefor; the extent to which new structures, instead of
3 existing structures, have been erected; and such other information
4 as the committee deems useful.

5 (2) The report prepared pursuant to this subsection shall be
6 transmitted to the Governor, the Legislature pursuant to section 2 of
7 P.L.1991, c.164 (C.52:14-19.1), and the respective chairpersons of
8 the Senate Economic Growth Committee, the Senate Environment
9 Committee, the Assembly Agriculture and Natural Resources
10 Committee, and the Assembly Environment and Solid Waste
11 Committee or their designated successors. Copies of the report
12 shall also be made available to the public upon request and free of
13 charge, and shall be posted on the website of the State Agriculture
14 Development Committee.

15 c. The committee shall adopt, pursuant to the "Administrative
16 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and
17 regulations necessary to carry out the purposes of this act.

18

19 5. Section 6 of P.L.1983, c.31 (C.4:1C-9) is amended to read as
20 follows:

21 6. Notwithstanding the provisions of any municipal or county
22 ordinance, resolution, or regulation to the contrary, the owner or
23 operator of a commercial farm, located in an area in which, as of
24 December 31, 1997 or thereafter, agriculture is a permitted use
25 under the municipal zoning ordinance and is consistent with the
26 municipal master plan, or which commercial farm is in operation as
27 of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al.), and the
28 operation of which conforms to agricultural management practices
29 recommended by the committee and adopted pursuant to the
30 provisions of the "Administrative Procedure Act," P.L.1968, c.410
31 (C.52:14B-1 et seq.), or whose specific operation or practice has
32 been determined by the appropriate county board, or in a county
33 where no county board exists, the committee, to constitute a
34 generally accepted agricultural operation or practice, and all
35 relevant federal or State statutes or rules and regulations adopted
36 pursuant thereto, and which does not pose a direct threat to public
37 health and safety may:

38 a. Produce agricultural and horticultural crops, trees and forest
39 products, livestock, and poultry and other commodities as described
40 in the Standard Industrial Classification for agriculture, forestry,
41 fishing and trapping or, after the operative date of the regulations
42 adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1),
43 included under the corresponding classification under the North
44 American Industry Classification System;

45 b. Process and package the agricultural output of the
46 commercial farm;

- 1 c. Provide for the operation of a farm market, including the
2 construction of building and parking areas in conformance with
3 municipal standards;
- 4 d. Replenish soil nutrients and improve soil tilth;
- 5 e. Control pests, predators and diseases of plants and animals;
- 6 f. Clear woodlands using open burning and other techniques,
7 install and maintain vegetative and terrain alterations and other
8 physical facilities for water and soil conservation and surface water
9 control in wetland areas;
- 10 g. Conduct on-site disposal of organic agricultural wastes;
- 11 h. Conduct agriculture-related educational and farm-based
12 recreational activities provided that the activities are related to
13 marketing the agricultural or horticultural output of the commercial
14 farm; **[and]**
- 15 i. Engage in the generation of power or heat from solar or
16 wind energy; and
- 17 j. Engage in any other agricultural activity as determined by
18 the State Agriculture Development Committee and adopted by rule
19 or regulation pursuant to the provisions of the "Administrative
20 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
21 (cf: P.L.2003, c.157, s.6)
22
- 23 '6. Section 3 of P.L.1983, c.32 (C.4:1C-13) is amended to read
24 as follows:
- 25 3. As used in this act:
- 26 a. "Agricultural development areas" means areas identified by
27 a county agricultural development board pursuant to the provisions
28 of section 11 of this act and certified by the State Agriculture
29 Development Committee;
- 30 b. "Agricultural use" means the use of land for common
31 farmsite activities, including but not limited to: production,
32 harvesting, storage, grading, packaging, processing and the
33 wholesale and retail marketing of crops, plants, animals and other
34 related commodities, including solar or wind energy generation, and
35 the use and application of techniques and methods of soil
36 preparation and management, fertilization, weed, disease and pest
37 control, disposal of farm waste, irrigation, drainage and water
38 management, and grazing;
- 39 c. "Board" means a county agriculture development board
40 established pursuant to section 7 or a subregional agricultural
41 retention board established pursuant to section 10 of this act;
- 42 d. "Committee" means the State Agriculture Development
43 Committee established pursuant to section 4 of the "Right to Farm
44 Act," P.L.1983, c.31 (C.4:1C-4);
- 45 e. "Cost," as used with respect to cost of fee simple absolute
46 title, development easements or soil and water conservation
47 projects, includes, in addition to the usual connotations thereof,
48 interest or discount on bonds; cost of issuance of bonds; the cost of

- 1 inspection, appraisal, legal, financial, and other professional
2 services, estimates and advice; and the cost of organizational,
3 administrative and other work and services, including salaries,
4 supplies, equipment and materials necessary to administer this act;
- 5 f. "Development easement" means an interest in land, less than
6 fee simple absolute title thereto, which enables the owner to
7 develop the land for any nonagricultural purpose as determined by
8 the provisions of this act and any relevant rules or regulations
9 promulgated pursuant hereto;
- 10 g. "Development project" means any proposed construction or
11 capital improvement for nonagricultural purposes;
- 12 h. "Farmland preservation program" or "municipally approved
13 farmland preservation program" (hereinafter referred to as
14 municipally approved program) means any voluntary program, the
15 duration of which is at least 8 years, authorized by law enacted
16 subsequent to the effective date of the "Farmland Preservation Bond
17 Act of 1981," P.L. 1981, c. 276, which has as its principal purpose
18 the long-term preservation of significant masses of reasonably
19 contiguous agricultural land within agricultural development areas
20 adopted pursuant to this act and the maintenance and support of
21 increased agricultural production as the first priority use of that
22 land. Any municipally approved program shall be established
23 pursuant to section 14 of this act;
- 24 i. "Fund" means the "Farmland Preservation Fund" created
25 pursuant to the "Farmland Preservation Bond Act of 1981," P.L.
26 1981, c. 276;
- 27 j. "Governing body" means, in the case of a county, the
28 governing body of the county, and in the case of a municipality, the
29 commission, council, board or body, by whatever name it may be
30 known, having charge of the finances of the municipality;
- 31 k. "Secretary" means the Secretary of Agriculture;
- 32 l. "Soil and water conservation project" means any project
33 designed for the control and prevention of soil erosion and sediment
34 damages, the control of pollution on agricultural lands, the
35 impoundment, storage and management of water for agricultural
36 purposes, or the improved management of land and soils to achieve
37 maximum agricultural productivity;
- 38 m. "Soil conservation district" means a governmental
39 subdivision of this State organized in accordance with the
40 provisions of R.S. 4:24-1 et seq.;
- 41 n. "Agricultural deed restrictions for farmland preservation
42 purposes" means a statement containing the conditions of the
43 conveyance and the terms of the restrictions set forth in P.L. 1983,
44 c. 32 and as additionally determined by the committee on the use
45 and the development of the land which shall be recorded with the
46 deed in the same manner as originally recorded.¹
- 47 (cf: P.L.1988, c.4, s.1)

1 ¹⁷. Section 3 of P.L.1964, c.48 (C.54:4-23.3) is amended to read
2 as follows:

3 3. Land shall be deemed to be in agricultural use when devoted
4 to the production for sale of plants and animals useful to man,
5 including but not limited to: forages and sod crops; grains and feed
6 crops; dairy animals and dairy products; poultry and poultry
7 products; livestock, including beef cattle, sheep, swine, horses,
8 ponies, mules or goats, including the breeding, boarding, raising,
9 rehabilitating, training or grazing of any or all of such animals ,
10 except that "livestock" shall not include dogs; bees and apiary
11 products; fur animals; trees and forest products; or when devoted to
12 and meeting the requirements and qualifications for payments or
13 other compensation pursuant to a soil conservation program under
14 an agreement with an agency of the federal government, except that
15 land which is devoted exclusively to the production for sale of tree
16 and forest products, other than Christmas trees, and is not
17 appurtenant woodland, shall not be deemed to be in agricultural use
18 unless the landowner fulfills the following additional conditions:

19 a. The landowner establishes and complies with the provisions
20 of a woodland management plan for this land, prepared in
21 accordance with policies, guidelines and practices approved by the
22 Division of Parks and Forestry in the Department of Environmental
23 Protection, in consultation with the Department of Agriculture and
24 the Dean of Cook College at Rutgers, The State University, which
25 policies, guidelines and practices are designed to eliminate
26 excessive and unnecessary cutting;

27 b. The landowner and a forester from a list of foresters
28 approved by the Department of Environmental Protection annually
29 attest to compliance with subsection a. of this section; and

30 c. The landowner annually submits an application, as
31 prescribed in section 13 of P.L.1964, c.48 (C.54:4-23.13), to the
32 assessor, accompanied by a copy of the plan established pursuant to
33 subsection a. of this section; written documentation of compliance
34 with subsection b. of this section; a supplementary woodland data
35 form setting forth woodland management actions taken in the pre-
36 tax year, the type and quantity of tree and forest products sold, and
37 the amount of income received or anticipated for same; a map of the
38 land showing the location of the activity and the soil group classes
39 of the land; and other pertinent information required by the Director
40 of the Division of Taxation as part of the application for valuation,
41 assessment and taxation, as provided in P.L.1964, c.48 (C.54:4-23.1
42 et seq.). The landowner shall, at the same time, submit to the
43 Commissioner of the Department of Environmental Protection an
44 exact copy of the application and accompanying information
45 submitted to the assessor pursuant to this subsection. For the
46 purposes of this amendatory and supplementary act, "appurtenant
47 woodland" means a wooded piece of property which is contiguous
48 to, part of, or beneficial to a tract of land, which tract of land has a

1 minimum area of at least five acres devoted to agricultural or
2 horticultural uses other than the production for sale of trees and
3 forest products, exclusive of Christmas trees, to which tract of land
4 the woodland is supportive and subordinate.

5 For the purposes of this section and P.L.1964, c.48 (C.54:4-23.1
6 et seq.), agricultural use shall also include solar or wind energy
7 generation ² [provided that the solar and wind energy generation
8 does not constitute the primary agricultural use of the property] ² ¹
9 (cf: P.L.1995, c.276, s.1)

10

11 ¹[6.] 8. ¹ This act shall take effect immediately.