

# STATE OF NEW YORK

7677

## IN SENATE

January 6, 2022

Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the executive law, in relation to the design of uniform standards and conditions relating to the construction and operation of major renewable energy facilities and the review of applications for permits to develop such facilities; and requires the office of renewable energy siting to establish or amend rules and regulations pertaining to renewable energy siting facilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (c) of subdivision 3 of section 94-c of the executive law, as added by section 4 of part JJJ of chapter 58 of the laws of 2020, is amended to read as follows:

2 (c) The uniform standards and conditions established pursuant to this  
3 section shall be designed to avoid or minimize, to the maximum extent  
4 practicable, any potential significant adverse environmental impacts  
5 and, to the maximum extent practicable, avoid, minimize, and mitigate  
6 agricultural impacts to active agricultural lands related to the siting,  
7 design, construction and operation of a major renewable energy facility.  
8 Such uniform standards and conditions shall apply to those environmental  
9 impacts the office determines are common to each type of major renewable  
10 energy facility.

11 § 2. Paragraphs (e), (f), (g), (h), and (i) of subdivision 3 of  
12 section 94-c of the executive law are relettered paragraphs (f), (g),  
13 (h), (i), and (j) and a new paragraph (e) is added to read as follows:

14 (e) In its review of an application for a permit to develop a major  
15 renewable energy facility, the office, in consultation with the depart-  
16 ment of agriculture and markets shall ensure that a critical mass of  
17 farmland within the designated region is not threatened, ensuring that  
18 no more than five percent of prime soils within a regional economic  
19 development council region shall have solar developed and ensure that  
20 solar development shall not greatly hinder the amount of farmland within  
21 New York state and/or be a potential threat to New York's food security.  
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EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 § 3. Section 94-c of the executive law is amended by adding a new  
2 subdivision 9 to read as follows:

3 9. Rules and regulations. The office shall establish and/or amend the  
4 rules and regulations pertaining to such office to include the follow-  
5 ing:

6 (a) the definition of prime farmland as defined in part 622.04 of the  
7 USDA handbook and the definitions of unique farmland, specific charac-  
8 teristics of unique farmland, additional farmland of statewide impor-  
9 tance, and additional farmland of local importance as such terms are  
10 defined in 7 CFR § 657.5.

11 (b)(i) preapplication procedures which require applicants to:

12 (1) submit a report delineating the impacts to prime agricultural land  
13 and prime soils, unique farmland and farmland of statewide and local  
14 importance, including soil classifications as established by the natural  
15 resources conservation service;

16 (2) submit a cumulative impact study as to how the use of farmland for  
17 solar siting will impact the regional food economy and regional overall  
18 farmland protection plan; and

19 (3) ensure that a critical mass of farmland within the designated  
20 region is not threatened, ensuring that no more than five percent of  
21 prime soils are being sited within a regional economic development coun-  
22 cil region; and

23 (ii) preference to be given to sites for solar development that are on  
24 brownfields, landfills, parking lots, rooftops, gravel pits and other  
25 areas where disturbance to local ecosystems is minimized. Such sites  
26 shall be granted expedited approval.

27 (c) application procedures for major renewable energy facility siting  
28 permits. Each application for such permit shall require:

29 (i) the submission of a cumulative impact statement within the study  
30 area which includes the following criteria:

31 (1) categories based on solar array size, specifying the array capaci-  
32 ty and how much power or electricity is expected to be generated,  
33 on-site or associated electric load, and the land use footprint, includ-  
34 ing the acreage of land underlying the array;

35 (2) customer type by identifying the end-use entity consuming the  
36 electricity or receiving the electric credits generated by the project  
37 and how such end-user is classified in a utilities' established electric  
38 rate structures for different customer classes, including residential,  
39 commercial, industrial, agricultural or low-income;

40 (3) categories based on solar array location, specifying whether solar  
41 arrays are roof-mounted, designating preferred sites for solar develop-  
42 ment and ineligible sites;

43 (4) categories based on solar array design, including specifying  
44 whether such solar array utilizes dual use or agrivoltaics; and

45 (ii) for major renewable energy facilities sited on prime soils or  
46 farmlands, the applicant to submit decommissioning plans for arrays on  
47 agricultural land and decommissioning bonds for commercial-scale  
48 projects. Such applications shall require the applicant to:

49 (1) include a decommissioning plan in the application;

50 (2) show substantial evidence that all structures and materials will  
51 be removed upon decommissioning of such facility and to ensure that  
52 soils will be capable of agricultural production; and

53 (3) obtain decommissioning surety bonds or another form of insurance  
54 to secure all or a part of decommissioning costs required at the conclu-  
55 sion of the lease.

1 (d) requiring the submission of a farmland conservation fee of one  
2 percent of the price per acre of prime soil or prime farmland which  
3 solar is developed on. Such farmland conservation fee shall be deposited  
4 in the farmland preservation fund subaccount of the environmental  
5 protection fund.

6 (e) farmland protection and consideration of local economies. The  
7 office shall take into account the regional impacts, based on the  
8 regional economic development council region, on farmland preservation,  
9 local food supply chains, and statewide food security; provided that the  
10 office shall ensure that a critical mass of farmland within the desig-  
11 nated region is not threatened and shall ensure that no more than five  
12 percent of prime soils within a regional economic development council  
13 region may be developed for solar projects. The office shall also  
14 require the permittee to coordinate with county-level governments to  
15 ensure no more than fifteen percent of the land mass by square mile of  
16 any county shall be developed for solar energy development or no more  
17 land mass than will significantly negatively impact the local economy,  
18 whichever is smaller.

19 § 4. This act shall take effect immediately; provided, however, that  
20 the amendments to section 94-c of the executive law made by sections  
21 one, two and three of this act shall not affect the repeal of such  
22 section and shall be deemed repealed therewith.