

# STATE OF NEW YORK

8088

## IN SENATE

January 25, 2022

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

AN ACT to amend the agriculture and markets law, in relation to the construction, installation and operation of dual-use solar energy projects on certain land which receives an agricultural assessment

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

1 Section 1. The agriculture and markets law is amended by adding two  
2 new sections 305-d and 305-e to read as follows:

3 § 305-d. Dual-use solar energy projects pilot program. 1. The depart-  
4 ment shall establish a dual-use solar energy project pilot program  
5 promoting the installation of dual-use energy projects on certain agri-  
6 cultural land. The department shall oversee the implementation of the  
7 pilot program.

8 2. Definitions. For the purposes of this section:

9 a. "Dual-use solar energy project" means a solar installation that  
10 integrates solar arrays and farming activity on the same ground. To be  
11 considered dual-use, a solar installation cannot displace farming activ-  
12 ity; farming activity must be maintained throughout the life of the  
13 solar facility in a manner that is consistent with commercial agricul-  
14 tural production as appropriate to the capacity of the land when farmed  
15 sustainably. Dual-use is different than simple co-location which gener-  
16 ally involves traditional ground-mounted solar installations that host  
17 non-agricultural plantings with additional environmental benefits. The  
18 term "dual-use" refers to a solar installation that: (i) retains or  
19 enhances the land's agricultural productivity, both short term and long  
20 term; (ii) is built, maintained, and has provisions for decommissioning  
21 to protect the land's agricultural resources and utility; and (iii)  
22 supports the viability of a farming operation.

23 b. "Preserved farmland" means land on which a development easement was  
24 conveyed to, or retained by, the committee, a board, or a qualifying tax  
25 exempt nonprofit organization for farmland preservation purposes.

26 c. "Unpreserved farmland" means any land that is valued, assessed, and  
27 taxed as farmland and is not preserved farmland.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 3. Notwithstanding the provisions of any law, rule, or regulation to  
2 the contrary, any owner of unreserved farmland which receives an agri-  
3 cultural assessment, may construct, install, and operate a dual-use  
4 solar energy project on such farmland, provided that:

5 a. the owner of the unreserved farmland which receives an agricul-  
6 tural assessment obtains the approval of the department, in addition to  
7 any other approvals that may be required pursuant to state or local law,  
8 rule, regulation, or ordinance, prior to the construction of the dual-  
9 use solar energy project;

10 b. the capacity of the dual-use solar energy project is less than ten  
11 megawatts of power;

12 c. the dual-use solar energy project is not located:

13 (i) within the Adirondack park, the Catskill park or any other forest  
14 preserve, as defined in section 9-0101 of the environmental conservation  
15 law; or

16 (ii) in freshwater wetlands, as defined in section 24-0107 of the  
17 environmental conservation law, or tidal wetlands as defined in section  
18 25-0103 of the environmental conservation law; or

19 d. the owner of the unreserved farmland which receives an agricul-  
20 tural assessment has filed a conservation plan with the soil conserva-  
21 tion district to account for the aesthetic, impervious coverage, and  
22 environmental impacts of the dual-use solar energy project, including,  
23 but not limited to, water recapture and filtration, and the conservation  
24 plan has been approved by the district;

25 e. the project complies with the agricultural environmental management  
26 program and any agricultural environmental management plan established  
27 pursuant to article eleven-A of this chapter; and

28 f. the owner of the unreserved farmland which receives an agricul-  
29 tural assessment, or the person undertaking the dual-use solar energy  
30 project, as applicable, obtains all necessary permits and other  
31 approvals as may be required pursuant to federal, state, or local law,  
32 rule, regulation, or ordinance.

33 4. The owner of the unreserved farmland which receives an agricul-  
34 tural assessment shall submit an application for approval by the depart-  
35 ment before constructing, installing, and operating a dual-use solar  
36 energy facility as allowed pursuant to subdivision one of this section.  
37 The department, in consultation with the office of renewable energy  
38 siting, shall, within ninety days after receipt, approve, disapprove, or  
39 approve with conditions an application submitted for the purposes of  
40 subdivision one of this section.

41 5. The department may suspend or revoke an approval issued pursuant to  
42 this section for a violation of any term or condition of the approval or  
43 any provision of this section.

44 6. The department, in consultation with the office of renewable energy  
45 siting and the department of environmental conservation, shall adopt  
46 rules and regulations necessary for the implementation of this section,  
47 including but not limited to: (i) the process by which a landowner may  
48 apply for the approval required pursuant to this section, and the estab-  
49 lishment of reasonable application fees to pay for the cost of review of  
50 the application; and (ii) provisions prescribing standards concerning  
51 impervious cover which may be permitted in connection with dual-use  
52 solar energy projects authorized to be constructed, installed, and oper-  
53 ated on unreserved farmland pursuant to this section.

54 7. The office of renewable energy siting shall provide technical  
55 assistance and support to the department concerning the department's  
56 responsibilities pursuant to this section.

1 8. Twelve months after the effective date of this section, and annual-  
2 ly thereafter, the commissioner shall report to the governor, temporary  
3 president of the senate and the speaker of the assembly on the dual-use  
4 solar energy projects pilot program and its results.

5 § 305-e. Dual-use solar energy projects pilot program; agricultural  
6 assessments. 1. No land used for a dual-use solar energy project  
7 constructed, installed, and operated pursuant to section three hundred  
8 five-d of this article shall be considered land used for a farm opera-  
9 tion for the purposes of agricultural assessments, except as provided in  
10 this section.

11 2. Land used for a dual-use solar energy project constructed,  
12 installed, and operated pursuant to section three hundred five-d of this  
13 article may be eligible for valuation, assessment, and taxation as agri-  
14 cultural land or a farm operation, provided that:

15 a. the dual-use solar energy project is located on unpreserved farm-  
16 land that is continuing to be in operation as land used in agricultural  
17 production in the tax year for which the valuation, assessment and taxa-  
18 tion as agricultural land or a farm operation is applied for;

19 b. in the tax year preceding the construction, installation, and oper-  
20 ation of the dual-use solar energy project, the acreage used for the  
21 dual-use solar energy project was valued, assessed, and taxed as land in  
22 agricultural production;

23 c. the land on which the dual-use solar energy project is located  
24 continues to be actively operated as land used in agricultural  
25 production, and meets any income requirements set forth for such land;

26 d. the approval issued for the dual-use solar energy project by the  
27 department pursuant to section three hundred five-d of this article has  
28 not been suspended or revoked; and

29 e. all other requirements for such valuation, assessment or taxation  
30 are met.

31 3. No generated energy from a dual-use solar energy project shall be  
32 considered a product of a farm operation, and no income from any power  
33 sold from the dual-use solar energy project may be considered income for  
34 eligibility for valuation, assessment, and taxation as agricultural land  
35 or a farm operation.

36 4. Within one year of the effective date of this section, the depart-  
37 ment of taxation and finance, in consultation with the department and  
38 the office of renewable energy siting, shall:

39 a. adopt such rules and regulations as may be necessary for the imple-  
40 mentation and administration of this section and section three hundred  
41 five-d of this article; and

42 b. incorporate information concerning dual-use solar energy projects  
43 into any guidelines provided, and continuing education courses offered,  
44 to municipal tax assessors, county assessors, county tax administrators,  
45 and other appropriate local government officials.

46 5. For the purposes of this section, "dual-use solar energy project"  
47 shall have the same meaning as defined in section three hundred five-d  
48 of this article.

49 § 2. This act shall take effect immediately.