STATE OF NEW YORK

6591

2021-2022 Regular Sessions

IN SENATE

May 7, 2021

Introduced by Sens. JORDAN, OBERACKER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to the major renewable energy development program; to amend the agriculture and markets law, in relation to establishing the significant farmland identification program; to amend the state finance law, in relation to establishing the farmland and agricultural preservation fund; and to provide for the repeal of such provisions upon the expiration thereof

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

Section 1. This act shall be known and may be cited as the "significant farmland preservation act".

§ 2. Legislative intent. It is the intent of this legislature to support and maintain significant farmland for future generations. The legislature recognizes that soil health and viability is a critical part not only of the environment and ecosystem, but also plays a critical role in the health of the economy. Significant farmland is the lasting legacy of major parts of New York state and has provided for the wellbeing and survival of generations of farmers. Those farmers, in turn, have provided for the state in numerous ways, not only economically, but with respect to providing food and sustenance for people in all parts of the state as well as in other parts of our nation. It is incumbent on this legislature to preserve, to all extent possible, nationally significant farmland for use by future generations while simultaneously providing for protection against climate change, which poses a risk to significant farmland. The legislature hereby determines that the public interest require that renewable energy be encouraged to the greatest extent possible while simultaneously recognizing that significant farmland must be protected and preserved.

§ 3. Subdivision 2 of section 94-c of the executive law is amended by adding a new paragraph (k) to read as follows:

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

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(k) "Significant farmland" shall mean farmland identified by the commissioner of the department of agriculture and markets through the significant farmland identification program established by subdivision 2-g of section sixteen of the agriculture and markets law.

§ 4. 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, paragraph (i) as amended by section 2 of part BBB of chapter 55 of the laws of 2021, is amended to read as follows:

3. Office of renewable energy siting; responsibilities. (a) There is hereby established within the department an office of renewable energy siting which is charged with accepting applications and evaluating, issuing, amending, approving the assignment and/or transfer of siting permits. The office shall exercise its authority by and through the executive director.

(b) The office shall within [~~one year~~] **three months** of the effective date of **a chapter of the laws of two thousand twenty-one that amended** this section establish a set of uniform standards and conditions for the siting, design, construction and operation of each type of major renewable energy facility relevant to issues that are common for particular classes and categories of major renewable energy facilities, in consultation with the New York state energy research and development authority, the department of environmental conservation, the department of public service, the department of agriculture and markets, and other relevant state agencies and authorities with subject matter expertise. Prior to adoption of uniform standards and conditions, the office shall hold four public hearings in different regions of the state to solicit comment from municipal, or political subdivisions, and the public on proposed uniform standards and conditions to avoid, minimize or mitigate potential adverse **significant farmland or** environmental impacts from the siting, design, construction and operation of a major renewable energy facility.

(c) The uniform standards and conditions established pursuant to this section shall be designed to avoid or minimize, to the maximum extent practicable, any potential [~~significant~~] adverse **significant farmland or** environmental impacts related to the siting, design, construction and operation of a major renewable energy facility. Such uniform standards and conditions shall apply to those environmental impacts the office determines are common to each type of major renewable energy facility.

(d) In its review of an application for a permit to develop a major renewable energy facility, the office, in consultation with the department of environmental conservation, shall identify those site-specific **significant farmland or** environmental impacts, if any, that may be caused or contributed to by a specific proposed major renewable energy facility and are unable to be addressed by the uniform standards and conditions. The office shall draft in consultation with the department of environmental conservation site specific permit terms and conditions for such impacts, including provisions for the avoidance or mitigation thereof, taking into account the CLCPA targets and the environmental benefits of the proposed major renewable energy facility, provided, however, that the office shall require that the application of uniform standards and conditions and site-specific conditions shall achieve a net conservation benefit to any impacted endangered and threatened species.

(e) To the extent that environmental impacts are not completely addressed by uniform standards and conditions and site-specific permit conditions proposed by the office, and the office determines that miti-

gation of such impacts may be achieved by off-site mitigation, the office may require payment of a fee by the applicant to achieve such off-site mitigation. If the office determines, in consultation with the department of environmental conservation, that mitigation of impacts to endangered or threatened species that achieves a net conservation benefit can be achieved by off-site mitigation, the amount to be paid for such off-site mitigation shall be set forth in the final siting permit. The office may require payment of funds sufficient to implement such off-site mitigation into the endangered and threatened species mitigation fund established pursuant to section ninety-nine-hh of the state finance law.

(f) **To the extent that significant farmland impacts are not completely addressed by uniform standards and conditions and site-specific permit conditions proposed by the office, and the office determines that mitigation of such impact is not substantially possible, the office shall require payment of a fee, to be established by the commissioner of agriculture and markets, by the applicant to the farmland and agricultural preservation fund established by section eighty-nine-j of the state finance law.**

(g) The office, by and through the executive director, shall be authorized to conduct hearings and dispute resolution proceedings, issue permits, and adopt such rules, regulations and procedures as may be necessary, convenient, or desirable to effectuate the purposes of this section.

[~~(g)~~] **(h)** The office shall within one year of the effective date of this section promulgate rules and regulations with respect to all necessary requirements to implement the siting permit program established in this section and promulgate modifications to such rules and regulations as it deems necessary; provided that the office shall promulgate regulations requiring the service of applications on affected municipalities and political subdivisions simultaneously with submission of the application to the office.

[~~(h)~~] **(i)** At the request of the office, all other state agencies and authorities are hereby authorized to provide support and render services to the office within their respective functions.

[~~(i)~~] **(j)** Notwithstanding any other provision of law, rule, or regulation to the contrary and consistent with appropriations therefor, employees of any state agency who are necessary to the functions of the office and who may be substantially engaged in the performance of its functions shall be transferred to the office in accordance with the provisions of section seventy of the civil service law. Employees transferred pursuant to this section shall be transferred without further examination or qualification and shall retain their respective civil service classifications. Nothing set forth in this subdivision shall be construed to impede, infringe, or diminish the rights and benefits that accrue to employees through collective bargaining agreements, impact or change an employee's membership in a bargaining unit, or otherwise diminish the integrity of the collective bargaining relationship.

§ 5. Subparagraph (ii) of paragraph c of subdivision 5 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:

(ii) For any municipality, political subdivision or an agency thereof that has received notice of the filing of an application, pursuant to regulations promulgated in accordance with this section, the municipality or political subdivision or agency thereof shall within the timeframes established by this subdivision submit a statement to the office

indicating whether the proposed facility is designed to be sited, constructed and operated in compliance with applicable local laws and regulations, if any, concerning the environment, **farmland,** or public health and safety. In the event that a municipality, political subdivision or an agency thereof submits a statement to the office that the proposed facility is not designed to be sited, constructed or operated in compliance with local laws and regulations and the office determines not to hold an adjudicatory hearing on the application, the department shall hold non-adjudicatory public hearing in the affected municipality or political subdivision.

§ 6. Section 16 of the agriculture and markets law is amended by adding a new subdivision 2-g to read as follows:

2-g. Oversee and administer a program entitled "significant farmland identification program" to identify significant farmland for the purposes of the major renewable energy development program established by section ninety-four-c of the executive law and establish fees pursuant to paragraph (f) of subdivision three of section ninety-four-c of the executive law. The program shall identify significant farmland throughout the state. The commissioner, in consultation with American Farmland Trust shall promulgate a standard for significant farmland in the state and shall promulgate rules and regulations for the program.

§ 7. The state finance law is amended by adding a new section 89-j to read as follows:

§ 89-j. Farmland and agricultural preservation fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "farmland and agricultural preservation fund".

2. Such fund shall consist of all revenues received from significant farmland mitigation funds pursuant to paragraph (f) of subdivision three of section ninety-four-c of the executive law and all revenues received from contributions, donations and all other moneys credited or transferred thereto from any other fund or source pursuant to law.

3. The moneys in such fund shall be expended for the purpose of making grants to eligible applicant organizations that take part in preservation and furtherance of farmland.

4. Moneys of the account shall be paid out of the account on the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner of agriculture and markets.

5. The commissioner of agriculture and markets shall promulgate rules and regulations establishing the criteria governing the eligibility of organizations to receive an award of grants as authorized by this section.

§ 8. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that:

(a) the amendments to section 94-c of the executive law made by sections three, four and five of this act shall be subject to the expiration and repeal of such section and shall expire and be deemed repealed therewith;

(b) this act shall expire and be deemed repealed on the same date and in the same manner as section 4 of part JJJ of chapter 58 of the laws of 2020 expires and is repealed; and

(c) any moneys remaining in the farmland and agricultural preservation fund established by section seven of this act on the date such section is repealed shall be deposited to the credit of the state general fund.