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:

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

§ 305-d. Dual-use solar energy projects pilot program. 1. The department shall establish a dual-use solar energy project pilot program promoting the installation of dual-use energy projects on certain agricultural land. The department shall oversee the implementation of the pilot program.

2. Definitions. For the purposes of this section:

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

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

c. "Unpreserved farmland" means any land that is valued, assessed, and 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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3. Notwithstanding the provisions of any law, rule, or regulation to the contrary, any owner of unpreserved farmland which receives an agricultural assessment, may construct, install, and operate a dual-use solar energy project on such farmland, provided that:

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

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

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

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

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

d. the owner of the unpreserved farmland which receives an agricultural assessment has filed a conservation plan with the soil conservation district to account for the aesthetic, impervious coverage, and environmental impacts of the dual-use solar energy project, including, but not limited to, water recapture and filtration, and the conservation plan has been approved by the district;

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

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

4. The owner of the unpreserved farmland which receives an agricultural assessment shall submit an application for approval by the department before constructing, installing, and operating a dual-use solar energy facility as allowed pursuant to subdivision one of this section. The department, in consultation with the office of renewable energy siting, shall, within ninety days after receipt, approve, disapprove, or approve with conditions an application submitted for the purposes of subdivision one of this section.

5. The department may 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.

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

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

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

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

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

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

b. 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 production;

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

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

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

3. No generated energy from a dual-use solar energy project shall be considered a product of a farm operation, 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 as agricultural land or a farm operation.

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

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

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

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

§ 2. This act shall take effect immediately.