STATE OF NEW YORK

3117--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. LUPARDO, WOERNER, STIRPE -- read once and referred to the Committee on Energy -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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:

(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 environmental impacts **and, to the maximum extent practicable, avoid, minimize, and mitigate agricultural impacts to active agricultural lands** 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.

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

(e) In its review of an application for a permit to develop a major renewable energy facility, the office, in consultation with the department of agriculture and markets shall ensure that a critical mass of farmland within the designated region is not threatened, ensuring that

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

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no more than five percent of prime soils within a regional economic development council region shall have solar developed and ensure that solar development shall not greatly hinder the amount of farmland within New York state and/or be a potential threat to New York's food security. Two years after the effective date of this paragraph, the office, in conjunction with the public service commission and the department of agriculture and markets, shall reevaluate the efficacy of this paragraph and propose recommendations to the legislature, including but not limited to, the consideration of new pertinent technology and/or information.

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

9. Rules and regulations. The office shall establish and/or amend the rules and regulations pertaining to such office to include the following:

(a) the definition of prime farmland as defined in part 622.04 of the USDA handbook and the definitions of unique farmland, specific characteristics of unique farmland, additional farmland of statewide importance, and additional farmland of local importance as such terms are defined in 7 CFR § 657.5.

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

(1) submit a report delineating the impacts to prime agricultural land and prime soils, unique farmland and farmland of statewide and local importance, including Mineral Soils Group (MSG) 1-4 as defined by the department of agriculture and markets;

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

(3) ensure that a critical mass of farmland within the designated region is not threatened, ensuring that no more than five percent of prime soils are being sited within a regional economic development council region. Two years after the effective date of this subdivision, the office, in conjunction with the public service commission and the department of agriculture and markets, shall reevaluate the efficacy of this clause and propose recommendations to the legislature, including but not limited to, the consideration of new pertinent technology and/or information; and

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

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

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

(1) categories based on solar array size, specifying the array capacity and how much power or electricity is expected to be generated, on-site or associated electric load, and the land use footprint, including the acreage of land underlying the array;

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

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

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

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

(1) include a decommissioning plan in the application;

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

(3) obtain decommissioning surety bonds or another form of insurance to secure all or a part of decommissioning costs required at the conclusion of the lease.

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

(e) farmland protection and consideration of local economies. The office shall take into account the regional impacts, based on the regional economic development council region, on farmland preservation, local food supply chains, and statewide food security; provided that the office shall ensure that a critical mass of farmland within the designated region is not threatened and shall ensure that no more than five percent of prime soils within a regional economic development council region may be developed for solar projects. The office shall also require the permittee to coordinate with county-level governments to ensure no more than fifteen percent of the land mass by square mile of any county shall be developed for solar energy development or no more land mass than will significantly negatively impact the local economy, whichever is smaller. Two years after the effective date of this subdivision, the office, in conjunction with the public service commission and the department of agriculture and markets, shall reevaluate the efficacy of this paragraph and propose recommendations to the legislature, including but not limited to, the consideration of new pertinent technology and/or information.

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