

# STATE OF NEW YORK

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1793--C

2023-2024 Regular Sessions

## IN SENATE

January 17, 2023

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Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:

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:

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

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(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 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. 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;

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

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

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

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

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

14 (d) requiring the submission of a farmland conservation fee of one  
15 percent of the price per acre of prime soil or prime farmland which  
16 solar is developed on. Such farmland conservation fee shall be deposited  
17 in the agricultural and farmland viability protection fund established  
18 pursuant to section ninety-nine-pp of the state finance law.

19 (e) farmland protection and consideration of local economies. The  
20 office shall take into account the regional impacts, based on the  
21 regional economic development council region, on farmland preservation,  
22 local food supply chains, and statewide food security; provided that the  
23 office shall ensure that a critical mass of farmland within the desig-  
24 nated region is not threatened. The office shall also require the  
25 permittee to coordinate with county-level governments to ensure no more  
26 land mass shall be developed for solar energy development than will  
27 significantly negatively impact the local economy. Two years after the  
28 effective date of this subdivision, the office, in conjunction with the  
29 public service commission and the department of agriculture and markets,  
30 shall reevaluate the efficacy of this paragraph and propose recommenda-  
31 tions to the legislature, including but not limited to, the consider-  
32 ation of new pertinent technology and/or information.

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