

STATE OF NEW YORK

1793--C

2023-2024 Regular Sessions

IN SENATE

January 17, 2023

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 execu-
2 tive law, as added by section 4 of part JJJ of chapter 58 of the laws
3 of 2020, is amended to read as follows:

4 (c) The uniform standards and conditions established pursuant to this
5 section shall be designed to avoid or minimize, to the maximum extent
6 practicable, any potential significant adverse environmental impacts
7 and, to the maximum extent practicable, avoid, minimize, and mitigate
8 agricultural impacts to active agricultural lands related to the siting,
9 design, construction and operation of a major renewable energy facility.
10 Such uniform standards and conditions shall apply to those environmental
11 impacts the office determines are common to each type of major renewable
12 energy facility.

13 § 2. Paragraphs (e), (f), (g), (h), and (i) of subdivision 3 of
14 section 94-c of the executive law are relettered paragraphs (f), (g),
15 (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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1 (e) In its review of an application for a permit to develop a major
2 renewable energy facility, the office, in consultation with the depart-
3 ment of agriculture and markets, shall ensure that a critical mass of
4 farmland within the designated region is not threatened and ensure that
5 solar development shall not greatly hinder the amount of farmland within
6 New York state and/or be a potential threat to New York's food security.
7 Two years after the effective date of this paragraph, the office, in
8 conjunction with the public service commission and the department of
9 agriculture and markets, shall reevaluate the efficacy of this paragraph
10 and propose recommendations to the legislature, including but not limit-
11 ed to, the consideration of new pertinent technology and/or information.

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

14 9. Rules and regulations. The office shall establish and/or amend the
15 rules and regulations pertaining to such office to include the follow-
16 ing:

17 (a) the definition of prime farmland as defined in part 622.04 of the
18 USDA handbook and the definitions of unique farmland, specific charac-
19 teristics of unique farmland, additional farmland of statewide impor-
20 tance, and additional farmland of local importance as such terms are
21 defined in 7 CFR § 657.5.

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

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

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

30 (3) ensure that a critical mass of farmland within the designated
31 region is not threatened. Two years after the effective date of this
32 subdivision, the office, in conjunction with the public service commis-
33 sion and the department of agriculture and markets, shall reevaluate the
34 efficacy of this clause and propose recommendations to the legislature,
35 including but not limited to, the consideration of new pertinent tech-
36 nology and/or information; and

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

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

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

45 (1) categories based on solar array size, specifying the array capaci-
46 ty and how much power or electricity is expected to be generated,
47 on-site or associated electric load, and the land use footprint, includ-
48 ing the acreage of land underlying the array;

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

54 (3) categories based on solar array location, specifying whether solar
55 arrays are roof-mounted, designating preferred sites for solar develop-
56 ment 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.