

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government
Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW

[First Reprint]

SENATE SUBSTITUTE FOR
SENATE, No. 1538

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED FEBRUARY 23, 2009

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Assemblyman DOUGLAS H. FISHER

District 3 (Salem, Cumberland and Gloucester)

Assemblywoman CONNIE WAGNER

District 38 (Bergen)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Co-Sponsored by:

Senators Baroni, Turner, Assemblywomen Lampitt, Vainieri Huttle and Greenstein

SYNOPSIS

Concerns biomass, solar, and wind energy generation on farms.

CURRENT VERSION OF TEXT

As amended by the Senate on June 18, 2009.

(Sponsorship Updated As Of: 1/12/2010)

1 AN ACT concerning agriculture and biomass, solar, and wind
2 energy, **'[amending and]'** supplementing P.L.1983, c.32
3 '(C.4:1C-11 et seq.), and amending and supplementing P.L.1983,
4 c.31' and P.L.1964, c.48 **'[**, supplementing Title 4 of the Revised
5 Statutes and P.L.1979, c.111 (C.13:18A-1 et seq.), and amending
6 P.L.1983, c.31**']'**.

7

8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10

11 1. (New section) a. Notwithstanding any law, rule or
12 regulation to the contrary, a person who owns preserved farmland
13 may construct, install, and operate biomass, solar, or wind energy
14 generation facilities, structures, and equipment on the farm, whether
15 on the preserved portion of the farm or on any portion excluded
16 from preservation, for the purpose of generating power or heat, and
17 may make improvements to any agricultural, horticultural,
18 residential, or other building or structure on the land for that
19 purpose, provided that the biomass, solar, or wind energy
20 generation facilities, structures, and equipment:

21 (1) do not interfere significantly with the use of the land for
22 agricultural or horticultural production, as determined by the
23 committee;

24 (2) are owned by the landowner ¹, or will be owned by the
25 landowner upon the conclusion of the term of an agreement with the
26 installer of the biomass, solar, or wind energy generation facilities,
27 structures, or equipment by which the landowner uses the income or
28 credits realized from the biomass, solar, or wind energy generation
29 to purchase the facilities, structures, or equipment¹ ;

30 (3) are used to provide power or heat to the farm, either directly
31 or indirectly, or to reduce, through net metering or similar programs
32 and systems, energy costs on the farm; and

33 (4) are limited ¹(a)¹ in annual energy generation capacity to the
34 previous calendar year's energy demand plus 10 percent, **'[except**
35 **as otherwise provided in]** in addition to what is allowed under¹
36 subsection b. of this section ¹, or alternatively at the option of the
37 landowner (b) to occupying no more than one percent of the area of
38 the entire farm including both the preserved portion and any portion
39 excluded from preservation¹ .

40 The person who owns the farm and the energy generation
41 facilities, structures, and equipment may only sell energy through
42 net metering ¹or as otherwise permitted under an agreement allowed
43 pursuant to paragraph (2) of this subsection¹ .

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted June 18, 2009.

1 b. The limit on the annual energy generation capacity
2 established pursuant to 'subparagraph (a) of' paragraph (4) of
3 subsection a. of this section shall not include energy generated from
4 facilities, structures, or equipment '[located] existing' on the roofs
5 of buildings or other structures '[constructed or used for
6 agricultural or horticultural purposes other than the generation of
7 energy for power or heat] on the farm as of the date of enactment of
8 P.L. , c. (C.) (pending before the Legislature as this bill)' .
9 c. A landowner shall seek and obtain the approval of the
10 committee before constructing, installing, and operating biomass,
11 solar, or wind energy 'generation' facilities, structures, and
12 equipment on the '[preserved]' farm as allowed pursuant to
13 subsection a. of this section. 'The committee shall provide the
14 holder of any development easement on the farm with a copy of the
15 application submitted for the purposes of subsection a. of this
16 section, and the holder of the development easement shall have 30
17 days within which to provide comments to the committee on the
18 application.' The committee shall, within 90 days of receipt,
19 approve, disapprove, or approve with conditions an application
20 submitted for the purposes of subsection a. of this section. The
21 decision of the committee on the application shall be based solely
22 upon the criteria listed in subsection a. of this section 'and
23 comments received from the holder of the development easement' .
24 d. No fee shall be charged of the landowner for review of an
25 application submitted to, or issuance of a decision by, the
26 committee pursuant to this section.
27 e. The committee may suspend or revoke an approval issued
28 pursuant to this section for a violation of any term or condition of
29 the approval or any provision of this section.
30 f. The committee, in consultation with the Department of
31 Environmental Protection and the Department of Agriculture, shall
32 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
33 c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the
34 implementation of this section, including provisions prescribing
35 standards concerning impervious cover which may be permitted in
36 connection with biomass, solar, or wind energy generation
37 facilities, structures, and equipment authorized to be constructed,
38 installed, and operated on lands pursuant to this section.
39 g. 'In the case of biomass energy generation facilities,
40 structures, or equipment, the landowner shall also seek and obtain
41 the approval of the Department of Agriculture as required pursuant
42 to section 5 of P.L. , c. (C.) (pending before the Legislature as
43 this bill) if the land is valued, assessed and taxed pursuant to the
44 "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et
45 seq.).

1 h. Notwithstanding any provision of this section to the contrary,
2 the construction, installation, or operation of any biomass, solar, or
3 wind energy generation facility, structure, or equipment in the
4 pinelands area, as defined and regulated by the "Pinelands
5 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), shall comply
6 with the standards of P.L.1979, c.111 and the comprehensive
7 management plan for the pinelands area adopted pursuant to
8 P.L.1979, c.111.

9 i.¹ For the purposes of this section:

10 "Biomass" means ¹[biomass that is cultivated and harvested on
11 the farm management unit in a sustainable manner.

12 "Farm management unit" means a parcel or parcels of land,
13 whether contiguous or noncontiguous, together with agricultural or
14 horticultural buildings, structures and facilities, producing
15 agricultural or horticultural products, and operated as a single
16 enterprise] an agricultural crop, crop residue, or agricultural
17 byproduct that is cultivated, harvested, or produced on the farm and
18 which can be used to generate energy in a sustainable manner¹ .

19 "Net metering" means the same as that term is used for purposes
20 of subsection e. of section 38 of P.L.1999, c.23 (C.48:3-87).

21 "Preserved farmland" means land on which a development
22 easement was conveyed to, or retained by, the committee, a board,
23 or a qualifying tax exempt nonprofit organization pursuant to the
24 provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of
25 P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-
26 38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), sections 37 through
27 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or any
28 other State law enacted for farmland preservation purposes.

29
30 ²2. Section 6 of P.L.1983, c.31 (C.4:1C-9) is amended to read as
31 follows:

32 6. Notwithstanding the provisions of any municipal or county
33 ordinance, resolution, or regulation to the contrary, the owner or
34 operator of a commercial farm, located in an area in which, as of
35 December 31, 1997 or thereafter, agriculture is a permitted use
36 under the municipal zoning ordinance and is consistent with the
37 municipal master plan, or which commercial farm is in operation as
38 of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al.), and the
39 operation of which conforms to agricultural management practices
40 recommended by the committee and adopted pursuant to the
41 provisions of the "Administrative Procedure Act," P.L.1968, c.410
42 (C.52:14B-1 et seq.), or whose specific operation or practice has
43 been determined by the appropriate county board, or in a county
44 where no county board exists, the committee, to constitute a
45 generally accepted agricultural operation or practice, and all
46 relevant federal or State statutes or rules and regulations adopted

1 pursuant thereto, and which does not pose a direct threat to public
2 health and safety may:

3 a. Produce agricultural and horticultural crops, trees and forest
4 products, livestock, and poultry and other commodities as described
5 in the Standard Industrial Classification for agriculture, forestry,
6 fishing and trapping or, after the operative date of the regulations
7 adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1),
8 included under the corresponding classification under the North
9 American Industry Classification System;

10 b. Process and package the agricultural output of the
11 commercial farm;

12 c. Provide for the operation of a farm market, including the
13 construction of building and parking areas in conformance with
14 municipal standards;

15 d. Replenish soil nutrients and improve soil tilth;

16 e. Control pests, predators and diseases of plants and animals;

17 f. Clear woodlands using open burning and other techniques,
18 install and maintain vegetative and terrain alterations and other
19 physical facilities for water and soil conservation and surface water
20 control in wetland areas;

21 g. Conduct on-site disposal of organic agricultural wastes;

22 h. Conduct agriculture-related educational and farm-based
23 recreational activities provided that the activities are related to
24 marketing the agricultural or horticultural output of the commercial
25 farm; [and]

26 i. Engage in the generation of power or heat from biomass,
27 solar, or wind energy, provided that the energy generation is
28 consistent with the provisions of P.L. , c. (C.) (pending before
29 the Legislature as this bill), as applicable, and the rules and
30 regulations adopted therefor and pursuant to section 3 of P.L. , c.
31 (C.) (pending before the Legislature as this bill); and

32 j. Engage in any other agricultural activity as determined by
33 the State Agriculture Development Committee and adopted by rule
34 or regulation pursuant to the provisions of the "Administrative
35 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).¹

36 (cf: P.L.2003, c.157, s.6)

37
38 ¹3. (New section) a. The committee shall adopt, pursuant to the
39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
40 seq.):

41 (1) such rules and regulations as may be necessary for the
42 implementation of subsection i. of section 6 of P.L.1983, c.31
43 (C.4:1C-9); and

44 (2) agricultural management practices for biomass energy
45 generation on commercial farms, including, but not necessarily
46 limited to, standards for the management of odor, dust, and noise.

1 b. The Board of Public Utilities shall provide technical
2 assistance and support to the State Agriculture Development
3 Committee with regard to the committee's responsibilities in
4 connection with this section and subsection i. of section 6 of
5 P.L.1983, c.31 (C.4:1C-9).

6 c. Notwithstanding any provision of this section or subsection i.
7 of section 6 of P.L.1983, c.31 (C.4:1C-9) to the contrary, the
8 construction, installation, or operation of any biomass, solar, or
9 wind energy generation facility, structure, or equipment in the
10 pinelands area, as defined and regulated by the "Pinelands
11 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), shall comply
12 with the standards of P.L.1979, c.111 and the comprehensive
13 management plan for the pinelands area adopted pursuant to
14 P.L.1979, c.111.

15 d. For the purposes of this section and subsection i. of section 6
16 of P.L.1983, c.31 (C.4:1C-9), "biomass" means an agricultural crop,
17 crop residue, or agricultural byproduct that is cultivated, harvested,
18 or produced on the commercial farm and which can be used to
19 generate energy in a sustainable manner.'

20
21 **'[2.] 4.'** (New section) a. (1) No land used **'[exclusively or**
22 **primarily]'** for biomass, solar, or wind energy generation shall be
23 considered land in agricultural or horticultural use or actively
24 devoted to agricultural or horticultural use for the purposes of the
25 "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et
26 seq.), except as provided in this section.

27 (2) No generated energy from any source shall be considered an
28 agricultural or horticultural product.

29 b. Land used for biomass, solar, or wind energy generation
30 may be eligible for valuation, assessment and taxation pursuant to
31 P.L.1964, c.48 (C.54:4-23.1 et seq.), provided that **'[**, for preserved
32 farmland the criteria in section 1 of P.L. , c. (C.) (pending
33 before the Legislature as this bill) are met, or, in the case of other
34 land**]'** :

35 (1) **'[The] the'** biomass, solar, or wind energy generation
36 facilities, structures, and equipment were constructed, installed, and
37 operated on property that is part of an operating farm continuing to
38 be in operation as a farm in the tax year for which the valuation,
39 assessment and taxation pursuant to P.L.1964, c.48 (C.54:4-23.1 et
40 seq.) is applied for;

41 (2) **'[In] in'** the tax year preceding the construction,
42 installation, and operation of the biomass, solar, or wind energy
43 generation facilities, structures, and equipment on an operating
44 farm, the acreage used for the biomass, solar, or wind energy
45 generation facilities, structures, and equipment was valued, assessed
46 and taxed as land in agricultural or horticultural use;

1 (3) '~~【The】 the~~' power or heat generated by the biomass, solar,
2 or wind energy generation facilities, structures, and equipment is
3 used to provide, either directly or indirectly but not necessarily
4 exclusively, power or heat to the farm or agricultural or
5 horticultural operations supporting the viability of the farm;

6 (4) '~~【The】 the~~' owner of the property has filed a conservation
7 plan with the '~~【Soil Conservation District】 soil conservation~~
8 district', with provisions for compliance with paragraph (5) of this
9 subsection where applicable, to account for the aesthetic,
10 impervious coverage, and environmental impacts of the
11 construction, installation, and operation of the biomass, solar, or
12 wind energy generation facilities, structures, and equipment,
13 including, but not necessarily limited to, water recapture and
14 filtration, and the conservation plan has been approved 'by the
15 district';

16 (5) '~~【Where】 where~~' solar energy generation facilities,
17 structures, and equipment are installed, the property under the solar
18 panels is used to the greatest extent practicable for the farming of
19 shade crops or other plants capable of being grown under such
20 conditions, or for pasture for grazing;

21 (6) '~~【The】 the~~' amount of acreage devoted to the biomass,
22 solar, or wind energy generation facilities, structures, and
23 equipment does not exceed a ratio of one to five acres, or portion
24 thereof, of land devoted to energy generation facilities, structures,
25 and equipment and land devoted to agricultural or horticultural
26 operations; '~~【and】~~'

27 (7) '~~【Biomass】 biomass~~', solar, or wind energy generation
28 facilities, structures, and equipment are constructed or installed on
29 no more than 10 acres of the farmland for which the owner of the
30 property is applying for valuation, assessment and taxation pursuant
31 to P.L.1964, c.48 (C.54:4-23.1 et seq.), and if power is being
32 generated, no more than two megawatts of power are generated on
33 the '~~【no more than】~~' 10 acres 'or less; and'

34 (8) for biomass energy generation, the owner of the property has
35 obtained the approval of the Department of Agriculture pursuant to
36 section 5 of P.L. , c. (C.) (pending before the Legislature as
37 this bill)' .

38 c. No income from any power or heat sold from the biomass,
39 solar, or wind energy generation may be considered income for
40 eligibility for valuation, assessment '~~【or】 and~~' taxation of land
41 pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48
42 (C.54:4-23.1 et seq.), and, notwithstanding the provisions of that
43 act, or any rule or regulation adopted pursuant thereto, to the
44 contrary, there shall be no income requirement for property valued,
45 assessed and taxed pursuant to subsection b. of this section.

1 d. 'Notwithstanding any provision of this section, section 3 of
2 P.L.1964, c.48 (C.54:4-23.3), or section 4 of P.L.1964, c.48
3 (C.54:4-23.4) to the contrary, the construction, installation, or
4 operation of any biomass, solar, or wind energy generation facility,
5 structure, or equipment in the pinelands area, as defined and
6 regulated by the "Pinelands Protection Act," P.L.1979, c.111
7 (C.13:18A-1 et seq.), shall comply with the standards of P.L.1979,
8 c.111 and the comprehensive management plan for the pinelands
9 area adopted pursuant to P.L.1979, c.111.

10 e. The Division of Taxation, in consultation with the Department
11 of Agriculture, shall adopt, pursuant to the "Administrative
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules
13 and regulations as may be necessary for the implementation and
14 administration of this section.

15 f.¹ For the purposes of this section:

16 "Biomass" means ¹[biomass that is cultivated and harvested on
17 the farm management unit] an agricultural crop, crop residue, or
18 agricultural byproduct that is cultivated, harvested, or produced on
19 the farm, or directly obtained from a farm where it was cultivated,
20 harvested, or produced, and which can be used to generate energy¹
21 in a sustainable manner ¹, except with respect to preserved
22 farmland, "biomass" means the same as that term is defined in
23 section 1 of P.L. , c. (C.) (pending before the Legislature as
24 this bill)¹ .

25 ¹["Farm management unit" means a parcel or parcels of land,
26 whether contiguous or noncontiguous, together with agricultural or
27 horticultural buildings, structures and facilities, producing
28 agricultural or horticultural products, and operated as a single
29 enterprise.]

30 "Land used for biomass, solar, or wind energy generation" means
31 the land upon which the biomass, solar, or wind energy generation
32 facilities, structures, and equipment are constructed, installed, and
33 operated. In the case of biomass energy generation, "land used for
34 biomass, solar, or wind energy generation" shall not mean the land
35 upon which agricultural or horticultural products used as fuel in the
36 biomass energy generation facility, structure, or equipment are
37 grown.¹

38 "Preserved farmland" means land on which a development
39 easement was conveyed to, or retained by, the ¹[committee, a
40 board,] State Agriculture Development Committee, a county
41 agriculture development board,¹ or a qualifying tax exempt
42 nonprofit organization pursuant to the provisions of section 24 of
43 P.L.1983, c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-
44 31.1), section 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of
45 P.L.1999, c.180 (C.4:1C-43.1), sections 37 through 40 of P.L.1999,

1 c.152 (C.13:8C-37 through C.13:8C-40), or any other State law
2 enacted for farmland preservation purposes.

3
4 '5. (New section) a. No person may construct, install, or
5 operate biomass energy generation facilities, structures, or
6 equipment on any land that is valued, assessed and taxed pursuant
7 to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-
8 23.1 et seq.), without the approval of the Department of
9 Agriculture, in addition to any other approvals that may be required
10 by law.

11 b. The Department of Agriculture, in consultation with the
12 Department of Environmental Protection, shall adopt, pursuant to
13 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
14 et seq.), rules and regulations concerning: (1) the construction,
15 installation, and operation of biomass energy generation facilities,
16 structures, and equipment and the management of biomass fuel for
17 such facilities, structures, and equipment on farms; and (2) the
18 process by which a landowner may apply for the approval required
19 pursuant to subsection a. of this section, including establishment of
20 reasonable application fees, if necessary, to help pay for the cost of
21 review of the application, except no application fee may be charged
22 for preserved farmland as defined in section 1 of P.L. , c. (C.)
23 (pending before the Legislature as this bill).

24 c. Notwithstanding any provision of this section to the contrary,
25 the construction, installation, or operation of any biomass, solar, or
26 wind energy generation facility, structure, or equipment in the
27 pinelands area, as defined and regulated by the "Pinelands
28 Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), shall comply
29 with the standards of P.L.1979, c.111 and the comprehensive
30 management plan for the pinelands area adopted pursuant to
31 P.L.1979, c.111.

32 d. For the purposes of this section, "biomass" means an
33 agricultural crop, crop residue, or agricultural byproduct that is
34 cultivated, harvested, or produced on the farm, or directly obtained
35 from a farm where it was cultivated, harvested, or produced, and
36 which can be used to generate energy in a sustainable manner,
37 except with respect to preserved farmland, "biomass" means the
38 same as that term is defined in section 1 of P.L. , c. (C.)
39 (pending before the Legislature as this bill).¹

40
41 '[3.] 6.' (New section) '[a. (1) The State Agriculture
42 Development Committee shall adopt, pursuant to the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), rules and regulations for the implementation and
45 administration of section 1 of P.L. , c. (C.) (pending before
46 the Legislature as this bill), section 6 of P.L.1983, c.31 (C.4:1C-9)
47 as amended by P.L. , c. (C.) (pending before the Legislature

1 as this bill), and section 3 of P.L.1983, c.32 (C.4:1C-13) as
2 amended by P.L. , c. (C.) (pending before the Legislature as
3 this bill).

4 (2) The Department of Agriculture, in consultation with the State
5 Agriculture Development Committee and the Department of the
6 Treasury, shall adopt, pursuant to the "Administrative Procedure
7 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and
8 regulations necessary to carry out the purposes of P.L. ,
9 c. (C.) (pending before the Legislature as this bill), except as
10 provided otherwise under paragraph (1) of this subsection and
11 subsection f. of section 1 of P.L. , c. (C.) (pending before the
12 Legislature as this bill).

13 b. (1)]¹ Every two years, the Department of Agriculture, in
14 consultation with the State Agriculture Development Committee
15 and the Department of the Treasury, shall prepare a report on the
16 implementation of P.L. , c. (C.) (pending before the
17 Legislature as this bill). The report shall include: a survey and
18 inventory of all biomass, solar, or wind energy 'generation'
19 facilities, structures, and equipment placed on farmland in
20 accordance with '[section 1 or 2 of]' P.L. , c. (C.) (pending
21 before the Legislature as this bill); the extent to which existing
22 structures, such as barns, sheds, and silos, are used for those
23 purposes, and how those structures have been modified therefor; the
24 extent to which new structures, instead of existing structures, have
25 been erected; and such other information as either of the
26 departments or the committee deems useful.

27 '[(2)]' The report prepared pursuant to this '[subsection]
28 section' shall be transmitted to the Governor, the Legislature
29 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and the
30 respective chairpersons of the Senate Economic Growth Committee,
31 the Senate Environment Committee, the Assembly Agriculture and
32 Natural Resources Committee, and the Assembly Environment and
33 Solid Waste Committee or their designated successors. Copies of
34 the report shall also be made available to the public upon request
35 and free of charge, and shall be posted on the website of the
36 Department of Agriculture.

37

38 '[4. Section 6 of P.L.1983, c.31 (C.4:1C-9) is amended to read
39 as follows:

40 6. Notwithstanding the provisions of any municipal or county
41 ordinance, resolution, or regulation to the contrary, the owner or
42 operator of a commercial farm, located in an area in which, as of
43 December 31, 1997 or thereafter, agriculture is a permitted use
44 under the municipal zoning ordinance and is consistent with the
45 municipal master plan, or which commercial farm is in operation as
46 of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al.), and the
47 operation of which conforms to agricultural management practices

1 recommended by the committee and adopted pursuant to the
2 provisions of the "Administrative Procedure Act," P.L.1968, c.410
3 (C.52:14B-1 et seq.), or whose specific operation or practice has
4 been determined by the appropriate county board, or in a county
5 where no county board exists, the committee, to constitute a
6 generally accepted agricultural operation or practice, and all
7 relevant federal or State statutes or rules and regulations adopted
8 pursuant thereto, and which does not pose a direct threat to public
9 health and safety may:

10 a. Produce agricultural and horticultural crops, trees and forest
11 products, livestock, and poultry and other commodities as described
12 in the Standard Industrial Classification for agriculture, forestry,
13 fishing and trapping or, after the operative date of the regulations
14 adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1),
15 included under the corresponding classification under the North
16 American Industry Classification System;

17 b. Process and package the agricultural output of the
18 commercial farm;

19 c. Provide for the operation of a farm market, including the
20 construction of building and parking areas in conformance with
21 municipal standards;

22 d. Replenish soil nutrients and improve soil tilth;

23 e. Control pests, predators and diseases of plants and animals;

24 f. Clear woodlands using open burning and other techniques,
25 install and maintain vegetative and terrain alterations and other
26 physical facilities for water and soil conservation and surface water
27 control in wetland areas;

28 g. Conduct on-site disposal of organic agricultural wastes;

29 h. Conduct agriculture-related educational and farm-based
30 recreational activities provided that the activities are related to
31 marketing the agricultural or horticultural output of the commercial
32 farm; **[and]**

33 i. Engage in the generation of power or heat from biomass,
34 solar, or wind energy, provided that the energy generation is
35 consistent with the provisions of section 1 or 2 of P.L. , c. (C.)
36 (pending before the Legislature as this bill), as applicable, and the
37 rules and regulations adopted therefor, and, in the case of biomass
38 energy, the energy is generated from biomass cultivated and
39 harvested on the farm management unit in a sustainable manner;
40 and

41 j. Engage in any other agricultural activity as determined by
42 the State Agriculture Development Committee and adopted by rule
43 or regulation pursuant to the provisions of the "Administrative
44 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

45 (cf: P.L.2003, c.157, s.6)']

1 ' [5. Section 3 of P.L.1983, c.32 (C.4:1C-13) is amended to read
2 as follows:

3 3. As used in this act:

4 a. "Agricultural development areas" means areas identified by
5 a county agricultural development board pursuant to the provisions
6 of section 11 of this act and certified by the State Agriculture
7 Development Committee;

8 b. "Agricultural use" means the use of land for common
9 farmsite activities, including but not limited to: production,
10 harvesting, storage, grading, packaging, processing and the
11 wholesale and retail marketing of crops, plants, animals and other
12 related commodities, including biomass, solar, or wind energy
13 generation consistent with the provisions of section 1 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill) and the rules
15 and regulations adopted therefor, provided that in the case of
16 biomass energy it is generated from biomass cultivated and
17 harvested on the farm management unit in a sustainable manner,
18 and the use and application of techniques and methods of soil
19 preparation and management, fertilization, weed, disease and pest
20 control, disposal of farm waste, irrigation, drainage and water
21 management, and grazing;

22 c. "Board" means a county agriculture development board
23 established pursuant to section 7 or a subregional agricultural
24 retention board established pursuant to section 10 of this act;

25 d. "Committee" means the State Agriculture Development
26 Committee established pursuant to section 4 of the "Right to Farm
27 Act," P.L.1983, c.31 (C.4:1C-4);

28 e. "Cost," as used with respect to cost of fee simple absolute
29 title, development easements or soil and water conservation
30 projects, includes, in addition to the usual connotations thereof,
31 interest or discount on bonds; cost of issuance of bonds; the cost of
32 inspection, appraisal, legal, financial, and other professional
33 services, estimates and advice; and the cost of organizational,
34 administrative and other work and services, including salaries,
35 supplies, equipment and materials necessary to administer this act;

36 f. "Development easement" means an interest in land, less than
37 fee simple absolute title thereto, which enables the owner to
38 develop the land for any nonagricultural purpose as determined by
39 the provisions of this act and any relevant rules or regulations
40 promulgated pursuant hereto;

41 g. "Development project" means any proposed construction or
42 capital improvement for nonagricultural purposes;

43 h. "Farmland preservation program" or "municipally approved
44 farmland preservation program" (hereinafter referred to as
45 municipally approved program) means any voluntary program, the
46 duration of which is at least 8 years, authorized by law enacted
47 subsequent to the effective date of the "Farmland Preservation Bond

1 Act of 1981," P.L.1981, c.276, which has as its principal purpose
2 the long-term preservation of significant masses of reasonably
3 contiguous agricultural land within agricultural development areas
4 adopted pursuant to this act and the maintenance and support of
5 increased agricultural production as the first priority use of that
6 land. Any municipally approved program shall be established
7 pursuant to section 14 of this act;

8 i. "Fund" means the "Farmland Preservation Fund" created
9 pursuant to the "Farmland Preservation Bond Act of 1981,"
10 P.L.1981, c.276;

11 j. "Governing body" means, in the case of a county, the
12 governing body of the county, and in the case of a municipality, the
13 commission, council, board or body, by whatever name it may be
14 known, having charge of the finances of the municipality;

15 k. "Secretary" means the Secretary of Agriculture;

16 l. "Soil and water conservation project" means any project
17 designed for the control and prevention of soil erosion and sediment
18 damages, the control of pollution on agricultural lands, the
19 impoundment, storage and management of water for agricultural
20 purposes, or the improved management of land and soils to achieve
21 maximum agricultural productivity;

22 m. "Soil conservation district" means a governmental
23 subdivision of this State organized in accordance with the
24 provisions of R.S. 4:24-1 et seq.; and

25 n. "Agricultural deed restrictions for farmland preservation
26 purposes" means a statement containing the conditions of the
27 conveyance and the terms of the restrictions set forth in P.L.1983,
28 c.32 and as additionally determined by the committee on the use
29 and the development of the land which shall be recorded with the
30 deed in the same manner as originally recorded.

31 (cf: P.L.1988, c.4, s.1)]¹

32
33 **'[6.] 7.'** Section 3 of P.L.1964, c.48 (C.54:4-23.3) is amended
34 to read as follows:

35 3. Land shall be deemed to be in agricultural use when devoted
36 to the production for sale of plants and animals useful to man,
37 including but not limited to: forages and sod crops; grains and feed
38 crops; dairy animals and dairy products; poultry and poultry
39 products; livestock, including beef cattle, sheep, swine, horses,
40 ponies, mules or goats, including the breeding, boarding, raising,
41 rehabilitating, training or grazing of any or all of such animals,
42 except that "livestock" shall not include dogs; bees and apiary
43 products; fur animals; trees and forest products; or when devoted to
44 and meeting the requirements and qualifications for payments or
45 other compensation pursuant to a soil conservation program under
46 an agreement with an agency of the federal government, except that
47 land which is devoted exclusively to the production for sale of tree

1 and forest products, other than Christmas trees, and is not
2 appurtenant woodland, shall not be deemed to be in agricultural use
3 unless the landowner fulfills the following additional conditions:

4 a. The landowner establishes and complies with the provisions
5 of a woodland management plan for this land, prepared in
6 accordance with policies, guidelines and practices approved by the
7 Division of Parks and Forestry in the Department of Environmental
8 Protection, in consultation with the Department of Agriculture and
9 the Dean of Cook College at Rutgers, The State University, which
10 policies, guidelines and practices are designed to eliminate
11 excessive and unnecessary cutting;

12 b. The landowner and a forester from a list of foresters
13 approved by the Department of Environmental Protection annually
14 attest to compliance with subsection a. of this section; and

15 c. The landowner annually submits an application, as
16 prescribed in section 13 of P.L.1964, c.48 (C.54:4-23.13), to the
17 assessor, accompanied by a copy of the plan established pursuant to
18 subsection a. of this section; written documentation of compliance
19 with subsection b. of this section; a supplementary woodland data
20 form setting forth woodland management actions taken in the pre-
21 tax year, the type and quantity of tree and forest products sold, and
22 the amount of income received or anticipated for same; a map of the
23 land showing the location of the activity and the soil group classes
24 of the land; and other pertinent information required by the Director
25 of the Division of Taxation as part of the application for valuation,
26 assessment and taxation, as provided in P.L.1964, c.48 (C.54:4-23.1
27 et seq.). The landowner shall, at the same time, submit to the
28 Commissioner of the Department of Environmental Protection an
29 exact copy of the application and accompanying information
30 submitted to the assessor pursuant to this subsection. For the
31 purposes of this amendatory and supplementary act, "appurtenant
32 woodland" means a wooded piece of property which is contiguous
33 to, part of, or beneficial to a tract of land, which tract of land has a
34 minimum area of at least five acres devoted to agricultural or
35 horticultural uses other than the production for sale of trees and
36 forest products, exclusive of Christmas trees, to which tract of land
37 the woodland is supportive and subordinate.

38 For the purposes of this section and P.L.1964, c.48 (C.54:4-23.1
39 et seq.):

40 (1) agricultural use shall also include biomass, solar, or wind
41 energy generation, provided that the biomass, solar, or wind energy
42 generation 'I':

43 (a) does not constitute the primary use of the land being valued,
44 assessed and taxed pursuant to P.L.1964, c.48 (C.54:4-23.1 et seq.):
45 and

1 **(b)]'** is consistent with the provisions of '[section 1 or 2 of]'
2 P.L. , c. (C.) (pending before the Legislature as this bill), as
3 applicable, and the rules and regulations adopted therefor; 'and'

4 (2) "biomass" means '[biomass that is cultivated and harvested
5 on the farm management unit in a sustainable manner; and

6 (3) "farm management unit" means a parcel or parcels of land,
7 whether contiguous or noncontiguous, together with agricultural or
8 horticultural buildings, structures and facilities, producing
9 agricultural or horticultural products, and operated as a single
10 enterprise] an agricultural crop, crop residue, or agricultural
11 byproduct that is cultivated, harvested, or produced on the farm, or
12 directly obtained from a farm where it was cultivated, harvested, or
13 produced, and which can be used to generate energy in a sustainable
14 manner, except with respect to preserved farmland, "biomass"
15 means the same as that term is defined in section 1 of P.L. , c.
16 (C.) (pending before the Legislature as this bill)' .

17 (cf: P.L.1995, c.276, s.1)

18
19 **'[7.] 8.'** Section 4 of P.L.1964, c.48 (C.54:4-23.4) is amended
20 to read as follows:

21 4. Land shall be deemed to be in horticultural use when devoted
22 to the production for sale of fruits of all kinds, including grapes,
23 nuts and berries; vegetables; nursery, floral, ornamental and
24 greenhouse products; or when devoted to and meeting the
25 requirements and qualifications for payments or other compensation
26 pursuant to a soil conservation program under an agreement with
27 an agency of the Federal Government.

28 For the purposes of this section and P.L.1964, c.48 (C.54:4-23.1
29 et seq.):

30 (1) horticultural use shall also include biomass, solar, or wind
31 energy generation, provided that the biomass, solar, or wind energy
32 generation '[:

33 (a) does not constitute the primary use of the land being valued,
34 assessed and taxed pursuant to P.L.1964, c.48 (C.54:4-23.1 et seq.);
35 and

36 **(b)]'** is consistent with the provisions of '[section 1 or 2 of]'
37 P.L. , c. (C.) (pending before the Legislature as this bill), as
38 applicable, and the rules and regulations adopted therefor; 'and'

39 (2) "biomass" means '[biomass that is cultivated and harvested
40 on the farm management unit in a sustainable manner; and

41 (3) "farm management unit" means a parcel or parcels of land,
42 whether contiguous or noncontiguous, together with agricultural or
43 horticultural buildings, structures and facilities, producing
44 agricultural or horticultural products, and operated as a single
45 enterprise] an agricultural crop, crop residue, or agricultural
46 byproduct that is cultivated, harvested, or produced on the farm, or

1 directly obtained from a farm where it was cultivated, harvested, or
2 produced, and which can be used to generate energy in a sustainable
3 manner, except with respect to preserved farmland, “biomass”
4 means the same as that term is defined in section 1 of P.L. , c.
5 (C.) (pending before the Legislature as this bill)¹ .
6 (cf: P.L.1964, c.48, s.4)

7
8 **¹[8.** (New section) Notwithstanding any provision of section 1
9 of P.L. , c. (C.) (pending before the Legislature as this bill)
10 and section 2 of P.L. , c. (C.) (pending before the Legislature
11 as this bill), and of section 6 of P.L.1983, c.31 (C.4:1C-9), section 3
12 of P.L.1983, c.32 (C.4:1C-13), and sections 3 and 4 of P.L.1964,
13 c.48 (C.54:4-23.3 and C.54:4-23.4) as amended by P.L. , c.
14 (C.) (pending before the Legislature as this bill), to the contrary,
15 the construction, installation, or operation of any biomass, solar, or
16 wind energy generation facility, structure, or equipment in the
17 pinelands area, as defined and regulated by the “Pinelands
18 Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.), shall comply
19 with the standards of P.L.1979, c.111 and the comprehensive
20 management plan for the pinelands area adopted pursuant to
21 P.L.1979, c.111.¹]

22
23 9. This act shall take effect immediately, except that sections
24 **¹[2, 6, and 7] 4, 7, and 8¹** of this act shall be applicable to tax years
25 commencing after the date of enactment of this act.

1 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
2 (cf: P.L.2003, c.157, s.6)

3

4 6. This act shall take effect immediately.

5

6

7

SPONSOR'S STATEMENT

8

9 This bill would allow a person who owns preserved farmland to
10 construct, install, and operate solar or wind energy facilities and
11 equipment on the farm, whether on the preserved portion of the
12 farm or on any portion excluded from preservation, for the purpose
13 of generating power or heat, and to make improvements to any
14 agricultural, residential, or other building or structure on the land
15 for that purpose, provided that the solar or wind energy generation
16 facilities and equipment:

17 (1) do not interfere significantly with the use of the land for
18 agricultural production, as determined by the State Agriculture
19 Development Committee (SADC);

20 (2) are owned by the landowner; and

21 (3) are used to provide power or heat to the farm, either directly
22 or indirectly, or to reduce, through net metering or similar programs
23 and systems, energy costs on the farm.

24 The landowner would be required to obtain the prior approval of
25 the SADC before constructing, installing, and operating the solar or
26 wind energy facilities and equipment on the preserved farm. No fee
27 would be charged of the landowner for review of an application
28 submitted to, or issuance of a decision by, the SADC in these
29 situations.

30 The bill also would allow a person who owns preserved farmland
31 to apply for, or authorize another person to apply for, a special
32 permit from the SADC to allow the other person to: (1) construct,
33 install, and operate solar or wind energy facilities and equipment on
34 the farm, whether on the preserved portion of the farm or on any
35 portion excluded from preservation, for the purpose of generating
36 power or heat for sale to an electric public utility, electric power
37 supplier, or basic generation service provider or to a public or
38 private entity; or (2) make improvements to any agricultural,
39 residential, or other building or structure on the land for that
40 purpose.

41 A special permit for that purpose may be issued by the SADC in
42 such situations provided that:

43 (1) the land is a commercial farm as defined pursuant to the
44 "Right to Farm Act";

45 (2) the permit is for a maximum of 20 years duration, subject to
46 renewal;

1 (3) the solar or wind energy facilities and equipment do not
2 interfere significantly with the use of the land for agricultural
3 production, as determined by the SADC;

4 (4) the solar or wind energy facilities and equipment do not have
5 a significant adverse impact upon the soils, water resources, air
6 quality, or other natural resources of the land or the surrounding
7 area; and

8 (5) any necessary approvals that may be required by federal,
9 State, or local law, rule, regulation, or ordinance are obtained.

10 The application fee for such a special permit would be \$1,000,
11 payable to the SADC regardless of whether or not a permit is
12 issued. All proceeds from the collection of these application fees
13 would be dedicated to, and utilized by, the SADC for farmland
14 preservation purposes.

15 The bill would authorize the SADC to suspend or revoke a
16 special permit or approval issued pursuant to this bill for a violation
17 of any term or condition of the permit or approval or any provision
18 of the bill.

19 The bill also would amend the "Right to Farm Act" to include
20 power or heat generation from solar or wind energy as a generally
21 accepted agricultural operation or practice for purposes of the
22 protections afforded to farmers under that law.

23 Finally, the bill would charge the SADC with the responsibility
24 of developing guidelines for the implementation and administration
25 of the bill, including, but not limited to, procedures and standards
26 for the filing, evaluation, and approval of special permit
27 applications, which seek to balance, as equally important concepts,
28 the public interest in protecting farmland from further development
29 as a means of preserving agriculture and agricultural structures and
30 enhancing the beauty and character of the State and the local
31 communities where farmland has been preserved with the public
32 interest in providing support to sustain and strengthen the State's
33 agricultural industry. The SADC also would be charged with
34 preparing a program report every two years.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 1538

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 9, 2008

The Senate Economic Growth Committee reports favorably, with committee amendments, Senate Bill No. 1598

This bill, as amended, would allow a person who owns preserved farmland to construct, install, and operate solar or wind energy facilities and equipment on the farm, whether on the preserved portion of the farm or on any portion excluded from preservation, for the purpose of generating power or heat, and to make improvements to any agricultural, residential, or other building or structure on the land for that purpose, provided that the solar or wind energy generation facilities and equipment:

(1) are owned by the landowner; and

(2) are used to provide power or heat to the farm, either directly or indirectly, or to reduce, through net metering or similar programs and systems, energy costs on the farm.

The landowner would be required to obtain the prior approval of the SADC before constructing, installing, and operating the solar or wind energy facilities and equipment on the preserved farm. No fee would be charged of the landowner for review of an application submitted to, or issuance of a decision by, the SADC in these situations.

The bill also would allow a person who owns preserved farmland to apply for, or authorize another person to apply for, a special permit from the SADC to allow the other person to: (1) construct, install, and operate solar or wind energy facilities and equipment on the farm, whether on the preserved portion of the farm or on any portion excluded from preservation, for the purpose of generating power or heat for sale to an electric public utility, electric power supplier, or basic generation service provider or to a public or private entity; or (2) make improvements to any agricultural, residential, or other building or structure on the land for that purpose.

A special permit for that purpose may be issued by the SADC in such situations provided that:

(1) the land is a commercial farm as defined pursuant to the "Right to Farm Act";

(2) the permit is for a maximum of 20 years duration, subject to renewal;

(3) the solar or wind energy facilities and equipment do not have a significant adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area; and

(4) any necessary approvals that may be required by federal, State, or local law, rule, regulation, or ordinance are obtained.

The application fee for such a special permit would be \$1,000, payable to the SADC regardless of whether or not a permit is issued. All proceeds from the collection of these application fees would be dedicated to, and utilized by, the SADC for farmland preservation purposes.

The bill would authorize the SADC to suspend or revoke a special permit or approval issued pursuant to this bill for a violation of any term or condition of the permit or approval or any provision of the bill.

The bill also would amend the "Right to Farm Act" to include power or heat generation from solar or wind energy as a generally accepted agricultural operation or practice for purposes of the protections afforded to farmers under that law.

Finally, the bill would charge the SADC with the responsibility of developing guidelines for the implementation and administration of the bill, including, but not limited to, procedures and standards for the filing, evaluation, and approval of special permit applications, which seek to balance, as equally important concepts, the public interest in protecting farmland from further development as a means of preserving agriculture and agricultural structures and enhancing the beauty and character of the State and the local communities where farmland has been preserved with the public interest in providing support to sustain and strengthen the State's agricultural industry. The SADC also would be charged with preparing a program report every two years.

COMMITTEE AMENDMENTS

The committee amended the bill to add "solar or wind energy generation" to the definition of agricultural use under the "Agriculture Retention and Development Act" for farmland preservation purposes, and under the "Farmland Assessment Act of 1964." By doing so, solar and wind energy would therefore be considered to be an agricultural product. For farmland assessment purposes, land on which solar and wind energy facilities are sited would be assessed as farmland, the same as with other agricultural products, provided the solar or wind energy operation does not constitute the primary agricultural use of the property.

The committee amendments also add a provision requiring the SADC, in conjunction with the Department of Environmental Protection and the Department of Agriculture, to adopt regulations concerning impervious cover connected with the construction,

installation and operation of solar or wind energy generation facilities on lands affected by the bill.

Last, the committee amendments delete related provisions in the bill that refer to wind and solar energy generation facilities in terms of interfering with agricultural production.

STATEMENT TO
[First Reprint]
SENATE, No. 1538

with Senate Floor Amendments
(Proposed By Senator SMITH)

ADOPTED: JUNE 12, 2008

This floor amendment would remove the condition directing that solar or wind energy generation may be included under the definition of “agricultural use” for farmland assessment purposes only if such facilities do not constitute the primary agricultural use of the property.

STATEMENT TO

SENATE SUBSTITUTE FOR

SENATE, No. 1538

with Senate Floor Amendments
(Proposed by Senator SMITH)

ADOPTED: JUNE 18, 2009

These floor amendments would:

(1) Allow the owner of a preserved farm to enter into an agreement with the installer of the biomass, solar, or wind energy generation facilities, structures, or equipment to purchase the facilities, structures or equipment using the income or credits realized from the biomass, solar, or wind energy generation;

(2) For preserved farms, provide an alternative to the limit in the Senate substitute bill on the annual energy generation capacity of the biomass, solar, or wind energy generation facilities, structures, or equipment to the previous calendar year's energy demand plus 10 percent. That alternative, which would be at the option of the landowner, would be to limit the biomass, solar, or wind energy generation facilities, structures, and equipment to occupying no more than one percent of the area of the entire farm including both the preserved portion and any portion excluded from preservation;

(3) Provide that the limit in the Senate substitute bill for a preserved farm on the annual energy generation capacity of the biomass, solar, or wind energy generation facilities, structures, or equipment to the previous calendar year's energy demand plus 10 percent would not include energy generated from facilities, structures, or equipment existing on the roofs of buildings or other structures on the farm as of the date of enactment of the bill into law; and delete language in the Senate substitute bill stating that the limit does not include energy generated from facilities, structures, or equipment located on the roofs of buildings or other structures constructed or used for agricultural or horticultural purposes other than the generation of energy for power or heat;

(4) Clarify that the owner of a preserved farm must seek and obtain the approval of the State Agriculture Development Committee (SADC) before constructing, installing, and operating biomass, solar, or wind energy generation facilities, structures, and equipment anywhere on the farm, not just on the preserved portion;

(5) Require the SADC to provide the holder of any development easement on the farm with a copy of the application submitted for the purposes of section 1 of the Senate substitute bill (that is, for the construction, installation, and operation of biomass, solar, or wind energy generation facilities, structures, or equipment on preserved

farms), and give the holder of the development easement 30 days within which to provide comments to the SADC on the application;

(6) Provide that the decision of the SADC on the application from a preserved farm would be based not only upon the criteria listed in the Senate substitute bill but also upon the comments received from the holder of the development easement;

(7) Require the SADC to adopt, pursuant to the "Right to Farm Act," agricultural management practices for biomass energy generation on commercial farms, including, but not necessarily limited to, standards for the management of odor, dust, and noise;

(8) Require the Board of Public Utilities to provide technical assistance and support to the SADC with regard to the committee's new responsibilities under the Senate substitute bill arising from expanding the list of farming activities protected under the "Right to Farm Act" to include biomass, solar, and wind energy generation on farms;

(9) Require that biomass used for energy generation on a commercial farm come from the farm itself if it is to qualify for protection under the "Right to Farm Act," provided that all other requirements under that act are met as well;

(10) Clarify that no land used for biomass, solar, or wind energy generation may qualify for farmland assessment except as provided in the bill;

(11) Clarify, in the farmland assessment portion of the Senate substitute bill, that "land used for biomass, solar, or wind energy generation" would mean the land upon which the biomass, solar, or wind energy generation facilities, structures, and equipment are constructed, installed, and operated, and, in the case of biomass energy generation, would not mean the land upon which agricultural or horticultural products used as fuel in the biomass energy generation facility, structure, or equipment are grown;

(12) Provide that no person may construct, install, or operate biomass energy generation facilities, structures, or equipment on any land that is farmland assessed without the approval of the Department of Agriculture, in addition to any other approvals that may be required by law;

(13) Require the Department of Agriculture, in consultation with the Department of Environmental Protection, to adopt rules: (a) concerning the construction, installation, and operation of biomass energy generation facilities, structures, and equipment and the management of biomass fuel for such facilities, structures, and equipment on farms; and (b) concerning the process by which a landowner may apply for Department of Agriculture approval, including establishment of reasonable application fees, if necessary, to help pay for the cost of review of the application, except no application fee may be charged for preserved farms;

(14) Allow biomass energy generation facilities, structures, and equipment on farms that are not preserved under farmland preservation programs to use biomass fuel from the farm or directly obtained from another farm; but with regard to preserved farms, including any

portion of the farm excluded from preservation, the biomass fuel would be allowed to come only from the farm;

(15) Delete the term “farm management unit” throughout the Senate substitute bill;

(16) Delete section 5 of the Senate substitute bill, which amended the definition of “agricultural use” in the “Agriculture Retention and Development Act”;

(17) Clarify the definition of “biomass” as it is used in several different contexts in the Senate substitute bill;

(18) Delete certain rulemaking authority provisions in the Senate substitute bill for the SADC and the Department of Agriculture because they were no longer necessary or were redundant to other such authority in the bill;

(19) Delete section 8 of the Senate substitute bill concerning the pinelands area and instead incorporate its provisions in several, more appropriate sections of the bill; and

(20) Make various technical and clarifying amendments to the Senate substitute bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE SUBSTITUE FOR
SENATE, No. 1538

STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly Appropriations Committee reports favorably Senate Bill No. 1538 (SS/1R).

The bill provides for biomass, solar, or wind energy generation on certain farmland. The bill allows an owner of preserved farmland to construct, install, and operate biomass, solar, or wind energy facilities, structures, and equipment on the farm, whether on the preserved or unpreserved portion of the farm, for the purpose of generating power or heat, and to make improvements to any agricultural, residential, or other building or structure on the land for that purpose, provided that the biomass, solar, or wind energy generation facilities, structures, and equipment: (1) do not interfere significantly with the use of the land for agricultural or horticulture production, as determined by the State Agriculture Development Committee (SADC); (2) are, or will be under a specialized agreement, owned by the landowner; (3) are used to provide power or heat to the farm, either directly or indirectly, or to reduce, through net metering or similar programs and systems, energy costs on the farm; and (4) are limited in annual energy generation capacity to the previous calendar year's energy demand plus 10 percent, in addition to certain other allowances.

It is the Committee's and the Sponsor's intent that the limit in paragraph (4) of subsection a. of section 1 of the bill (which limits the energy generation capacity of biomass, solar, or wind facilities, structures, and equipment proposed to be constructed on a preserved farm to the farm's previous calendar year's energy demand plus 10 percent) would be applied at time of initial construction and that absolutely no further expansion in energy generation capacity would be allowed thereafter at any time.

The bill also provides that the limit on annual energy generation on preserved farms is not to include energy generated from facilities, structures, or equipment located on the roofs of buildings or other structures on the farm as of the date of enactment of this bill. The bill also specifies that the person who owns a farm with biomass, solar or wind energy generation facilities, structures, and equipment thereon

may only sell energy via net metering or as otherwise permitted under a specialized agreement with an installer whereby the landowner uses the income or credits realized from the energy generation activities to purchase the energy generating facilities, structures, or equipment.

Under the bill, the owner of preserved farmland is required to obtain the prior approval of the SADC before constructing, installing, and operating the biomass, solar, or wind energy facilities and equipment on the preserved farm. The bill provides that no fee is to be charged of the landowner for review of an application submitted to, or issuance of a decision by, the SADC in these situations. Additionally, the bill provides that in the case of biomass energy generation facilities, structures, or equipment a landowner must also obtain the approval of the Department of Agriculture. The bill grants the Department of Environmental Protection and the Department of Agriculture with the authority to adopt regulation to implement this process.

The bill also amends the “Right to Farm Act” to specify that power or heat generation from biomass, solar, or wind energy is a permissible activity for certain commercial farms. The bill specifies that power or heat generation from biomass must be undertaken in a sustainable manner and in adherence to management practices for biomass energy generation on commercial farms as is to be promulgated by the SADC. In SADC’s promulgation of management practices for biomass energy generation on commercial farms, the Board of Public Utilities is to provide technical assistance.

The bill also addresses how farmland used for biomass, solar or wind energy generation is to be treated under the “Farmland Assessment Act.” The bill provides specific criteria under which farmland used for biomass, solar or wind energy generation may be eligible for designation as being actively devoted to agricultural or horticultural use for the purposes of farmland assessment. Land used for biomass, solar, or wind energy generation may be eligible for farmland valuation, assessment, and taxation if it meets the following requirements: (1) The biomass, solar, or wind energy generation facilities, structures, and equipment were constructed, installed, and operated on property that is part of an operating farm continuing to be in operation as a farm in the tax year for which the farmland assessment is applied; (2) In the tax year preceding the construction, installation, and operation of the biomass, solar, or wind energy generation facilities, structures, and equipment on an operating farm, the acreage used for the biomass, solar, or wind energy generation facilities, structures, and equipment was valued, assessed, and taxed as land in agricultural use; (3) The power or heat generated by the biomass, solar, or wind energy generation facilities, structures, and equipment is used to provide, either directly or indirectly but not necessarily exclusively, power or heat to the farm or agricultural or horticultural operations supporting the viability of the farm; (4) The

owner of the property has filed a conservation plan with the soil conservation district, including provisions for compliance with the provisions of (5) below, to account for the aesthetic, impervious coverage, and environmental impacts of the construction, installation, and operation, including, but not necessarily limited to, water recapture and filtration, and the conservation plan has been approved; (5) Where solar energy generation facilities, structures, and equipment are installed, the property under the solar panels is used to the greatest extent practicable for the farming of shade crops or other plants capable of being grown under such conditions, or for pasture for grazing; (6) The amount of acreage devoted to the biomass, solar, or wind energy generation facilities, structures, and equipment does not exceed a ratio of one to five acres, or portion thereof, of land devoted to energy generation facilities, structures, and equipment and land devoted to agricultural or horticultural operations; (7) Biomass, solar, or wind energy generation facilities, structures, and equipment are constructed or installed on 10 acres or less of the farmland for which the owner of the property is applying for valuation, assessment and taxation, and if power is being generated, no more than 2 megawatts of power are generated on the 10 acres or less; and (8) for biomass energy generation the owner of the property has obtained the approval of the Department of Agriculture.

Furthermore, the bill specifies no income from any power or heat sold from the biomass, solar, or wind energy generation may be considered income for purposes of determining eligibility under the "Farmland Assessment Act." The bill also provides that there is no income requirement for farmland used for biomass, solar, or wind energy generation under the "Farmland Assessment Act."

The bill empowers the Division of Taxation, in consultation with the Department of Agriculture, to adopt regulation to implement the bill's provisions regarding the treatment of land used for biomass, solar, or wind energy generation under the "Farmland Assessment Act." With regard to the bill's requirement that land used for biomass energy generation may not qualify for treatment under the "Farmland Assessment Act" without the approval of the Department of Agriculture, the bill provides the Department of Agriculture, in consultation with the Department of Environmental Protection, the authority to adopt regulation for that approval process, including but not limited to, the establishment of reasonable application fees, except that no application fee may be charged for preserved farmland.

The bill also provides that that biomass, solar or wind energy generation facilities installed in the pinelands area must comply with the Pinelands Protection Act and the comprehensive management plan adopted pursuant thereto.

The bill charges the Department of Agriculture, in consultation with the SADC and the Department of the Treasury with preparing a program report every two years on the implementation of this bill.

This bill is identical to the Assembly Committee Substitute for Assembly Bill No. 2859 (ACS) as also reported by the Committee.

FISCAL IMPACT:

The bill was not certified as requiring a fiscal note.

1 or regulation pursuant to the provisions of the "Administrative
2 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
3 (cf: P.L.2003, c.157, s.6)

4

5 6. This act shall take effect immediately.

6

7

8

SPONSOR'S STATEMENT

9

10 This bill would allow a person who owns preserved farmland to
11 construct, install, and operate solar or wind energy facilities and
12 equipment on the farm, whether on the preserved portion of the
13 farm or on any portion excluded from preservation, for the purpose
14 of generating power or heat, and to make improvements to any
15 agricultural, residential, or other building or structure on the land
16 for that purpose, provided that the solar or wind energy generation
17 facilities and equipment:

18 (1) do not interfere significantly with the use of the land for
19 agricultural production, as determined by the State Agriculture
20 Development Committee (SADC);

21 (2) are owned by the landowner; and

22 (3) are used to provide power or heat to the farm, either directly
23 or indirectly, or to reduce, through net metering or similar programs
24 and systems, energy costs on the farm.

25 The landowner would be required to obtain the prior approval of
26 the SADC before constructing, installing, and operating the solar or
27 wind energy facilities and equipment on the preserved farm. No fee
28 would be charged of the landowner for review of an application
29 submitted to, or issuance of a decision by, the SADC in these
30 situations.

31 The bill also would allow a person who owns preserved farmland
32 to apply for, or authorize another person to apply for, a special
33 permit from the SADC to allow the other person to: (1) construct,
34 install, and operate solar or wind energy facilities and equipment on
35 the farm, whether on the preserved portion of the farm or on any
36 portion excluded from preservation, for the purpose of generating
37 power or heat for sale to an electric public utility, electric power
38 supplier, or basic generation service provider or to a public or
39 private entity; or (2) make improvements to any agricultural,
40 residential, or other building or structure on the land for that
41 purpose.

42 A special permit for that purpose may be issued by the SADC in
43 such situations provided that:

44 (1) the land is a commercial farm as defined pursuant to the
45 "Right to Farm Act";

46 (2) the permit is for a maximum of 20 years duration, subject to
47 renewal;

1 (3) the solar or wind energy facilities and equipment do not
2 interfere significantly with the use of the land for agricultural
3 production, as determined by the SADC;

4 (4) the solar or wind energy facilities and equipment do not
5 have a significant adverse impact upon the soils, water resources,
6 air quality, or other natural resources of the land or the surrounding
7 area; and

8 (5) any necessary approvals that may be required by federal,
9 State, or local law, rule, regulation, or ordinance are obtained.

10 The application fee for such a special permit would be \$1,000,
11 payable to the SADC regardless of whether or not a permit is
12 issued. All proceeds from the collection of these application fees
13 would be dedicated to, and utilized by, the SADC for farmland
14 preservation purposes.

15 The bill would authorize the SADC to suspend or revoke a
16 special permit or approval issued pursuant to this bill for a violation
17 of any term or condition of the permit or approval or any provision
18 of the bill.

19 The bill also would amend the "Right to Farm Act" to include
20 power or heat generation from solar or wind energy as a generally
21 accepted agricultural operation or practice for purposes of the
22 protections afforded to farmers under that law.

23 Finally, the bill would charge the SADC with the responsibility
24 of developing guidelines for the implementation and administration
25 of the bill, including, but not limited to, procedures and standards
26 for the filing, evaluation, and approval of special permit
27 applications, which seek to balance, as equally important concepts,
28 the public interest in protecting farmland from further development
29 as a means of preserving agriculture and agricultural structures and
30 enhancing the beauty and character of the State and the local
31 communities where farmland has been preserved with the public
32 interest in providing support to sustain and strengthen the State's
33 agricultural industry. The SADC also would be charged with
34 preparing a program report every two years.

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2859

STATE OF NEW JERSEY

DATED: JANUARY 26, 2009

The Assembly Agriculture and Natural Resources Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2859.

The committee substitute provides for biomass, solar, or wind energy generation on preserved and nonpreserved farms.

The committee substitute would allow a person who owns preserved farmland to construct, install, and operate biomass, solar, or wind energy facilities, structures, and equipment on the farm, whether on the preserved portion of the farm or on any portion excluded from preservation, for the purpose of generating power or heat, and to make improvements to any agricultural, residential, or other building or structure on the land for that purpose, provided that the biomass, solar, or wind energy generation facilities, structures, and equipment:

(1) do not interfere significantly with the use of the land for agricultural production, as determined by the State Agriculture Development Committee (SADC);

(2) are owned by the landowner;

(3) are used to provide power or heat to the farm, either directly or indirectly, or to reduce, through net metering or similar programs and systems, energy costs on the farm; and

(4) are limited in annual energy generation capacity to the previous calendar year's energy demand plus 10 percent.

The committee substitute provides that the limit on annual energy generation on preserved farms would not include energy generated from facilities, structures, or equipment located on the roofs of buildings or other structures constructed or used for agricultural purposes other than the generation of energy for power or heat. The committee substitute also specifies that the person who owns the preserved farm and the energy generation facilities, structures, and equipment may only sell energy via net metering.

The landowner would be required to obtain the prior approval of the SADC before constructing, installing, and operating the biomass, solar, or wind energy facilities and equipment on the preserved farm. No fee would be charged of the landowner for review of an application

submitted to, or issuance of a decision by, the SADC in these situations.

The committee substitute also would amend the “Right to Farm Act” to include power or heat generation from biomass, solar, or wind energy as a generally accepted agricultural operation or practice for purposes of the protections afforded to farmers under that law, provided that any biomass is cultivated and harvested on the farm management unit in a sustainable manner.

The committee substitute would charge the SADC with the responsibility of developing guidelines for the implementation and administration of the committee substitute. The Department of Agriculture, in consultation with the SADC and the Department of the Treasury, also would be charged with preparing a program report every two years, and adopting rules and regulations for the implementation of the provisions of the committee substitute.

The committee substitute also amends and supplements the “Farmland Assessment Act” with respect to how property involved with energy generation for both preserved and nonpreserved farms would be addressed under farmland assessment. The committee substitute provides that the energy generated in this manner would not be considered an agricultural or farm product, and that land used exclusively or primarily for biomass, solar, or wind energy generation would not be considered land in agricultural use or actively devoted to agricultural or horticultural use for the purposes of farmland assessment, except as provided in the committee substitute.

Land used for biomass, solar, or wind energy generation may be eligible for farmland valuation, assessment, and taxation if:

- 1) for preserved farmland, the criteria in section 1 of the committee substitute are met; or
- 2) for other land, the criteria in section 2 of the committee substitute are met.

The criteria in section 2 are:

- 1) The biomass, solar, or wind energy generation facilities, structures, and equipment were constructed, installed, and operated on property that is part of an operating farm continuing to be in operation as a farm in the tax year for which the farmland assessment is applied;
- 2) In the tax year preceding the construction, installation, and operation of the biomass, solar, or wind energy generation facilities, structures, and equipment on an operating farm, the acreage used for the biomass, solar, or wind energy generation facilities, structures, and equipment was valued, assessed, and taxed as land in agricultural use;
- 3) The power or heat generated by the biomass, solar, or wind energy generation facilities, structures, and equipment is used to provide, either directly or indirectly but not necessarily exclusively, power or heat to the farm or agricultural operations supporting the viability of the farm;

4) The owner of the property has filed a conservation plan with the Soil Conservation District, including provisions for compliance with the provisions of 5) below, to account for the aesthetic, impervious coverage, and environmental impacts of the construction, installation, and operation, including, but not necessarily limited to, water recapture and filtration, and the conservation plan has been approved;

5) Where solar energy generation facilities, structures, and equipment are installed, the property under the solar panels is used to the greatest extent practicable for the farming of shade crops or other plants capable of being grown under such conditions, or for pasture for grazing;

6) The amount of acreage devoted to the biomass, solar, or wind energy generation facilities, structures, and equipment does not exceed a ratio of one to five acres, or portion thereof, of land devoted to energy generation facilities, structures, and equipment and land devoted to agricultural operations; and

7) Biomass, solar, or wind energy generation facilities, structures, and equipment are constructed or installed on no more than 10 acres of the farmland for which the owner of the property is applying for farmland assessment, and if power is being generated, no more than 2 megawatts of power are generated on the no more than 10 acres.

Furthermore, the committee substitute specifies no income from any power or heat sold from the biomass, solar, or wind energy generation may be considered income for eligibility for farmland assessment, and there would be no income requirement for land being considered for farmland assessment that is used for biomass, solar, or wind energy generation.

Finally, the committee substitute provides that no person may cut down any tree or convert a forest area to agricultural use for the purposes of constructing, installing, and operating a solar, wind, or biomass energy generation facility in the pinelands area without the approval of the Pinelands Commission.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 2859

STATE OF NEW JERSEY

DATED: JANUARY 4, 2010

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2859 (ACS).

This substitute provides for biomass, solar, or wind energy generation on certain farmland. The substitute allows an owner of preserved farmland to construct, install, and operate biomass, solar, or wind energy facilities, structures, and equipment on the farm, whether on the preserved or unpreserved portion of the farm, for the purpose of generating power or heat, and to make improvements to any agricultural, residential, or other building or structure on the land for that purpose, provided that the biomass, solar, or wind energy generation facilities, structures, and equipment: (1) do not interfere significantly with the use of the land for agricultural or horticulture production, as determined by the State Agriculture Development Committee (SADC); (2) are, or will be under a specialized agreement, owned by the landowner; (3) are used to provide power or heat to the farm, either directly or indirectly, or to reduce, through net metering or similar programs and systems, energy costs on the farm; and (4) are limited in annual energy generation capacity to the previous calendar year's energy demand plus 10 percent, in addition to certain other allowances.

It is the Committee's and the Sponsor's intent that the limit in paragraph (4) of subsection a. of section 1 of the bill (which limits the energy generation capacity of biomass, solar, or wind facilities, structures, and equipment proposed to be constructed on a preserved farm to the farm's previous calendar year's energy demand plus 10 percent) would be applied at time of initial construction and that absolutely no further expansion in energy generation capacity would be allowed thereafter at any time.

The substitute also provides that the limit on annual energy generation on preserved farms is not to include energy generated from facilities, structures, or equipment located on the roofs of buildings or other structures on the farm as of the date of enactment of this bill. The

substitute also specifies that the person who owns a farm with biomass, solar or wind energy generation facilities, structures, and equipment thereon may only sell energy via net metering or as otherwise permitted under a specialized agreement with an installer whereby the landowner uses the income or credits realized from the energy generation activities to purchase the energy generating facilities, structures, or equipment.

Under the substitute, the owner of preserved farmland is required to obtain the prior approval of the SADC before constructing, installing, and operating the biomass, solar, or wind energy facilities and equipment on the preserved farm. The substitute provides that no fee is to be charged of the landowner for review of an application submitted to, or issuance of a decision by, the SADC in these situations. Additionally, the substitute provides that in the case of biomass energy generation facilities, structures, or equipment a landowner must also obtain the approval of the Department of Agriculture. The substitute grants the Department of Environmental Protection and the Department of Agriculture with the authority to adopt regulation to implement this process.

The substitute also amends the "Right to Farm Act" to specify that power or heat generation from biomass, solar, or wind energy is a permissible activity for certain commercial farms. The substitute specifies that power or heat generation from biomass must be undertaken in a sustainable manner and in adherence to management practices for biomass energy generation on commercial farms as is to be promulgated by the SADC. In SADC's promulgation of management practices for biomass energy generation on commercial farms, the Board of Public Utilities is to provide technical assistance.

The substitute also addresses how farmland used for biomass, solar or wind energy generation is to be treated under the "Farmland Assessment Act." The substitute provides specific criteria under which farmland used for biomass, solar or wind energy generation may be eligible for designation as being actively devoted to agricultural or horticultural use for the purposes of farmland assessment. Land used for biomass, solar, or wind energy generation may be eligible for farmland valuation, assessment, and taxation if it meets the following requirements: (1) The biomass, solar, or wind energy generation facilities, structures, and equipment were constructed, installed, and operated on property that is part of an operating farm continuing to be in operation as a farm in the tax year for which the farmland assessment is applied; (2) In the tax year preceding the construction, installation, and operation of the biomass, solar, or wind energy generation facilities, structures, and equipment on an operating farm, the acreage used for the biomass, solar, or wind energy generation facilities, structures, and equipment was valued, assessed, and taxed as land in agricultural use; (3) The power or heat generated by the biomass, solar, or wind energy generation facilities,

structures, and equipment is used to provide, either directly or indirectly but not necessarily exclusively, power or heat to the farm or agricultural or horticultural operations supporting the viability of the farm; (4) The owner of the property has filed a conservation plan with the soil conservation district, including provisions for compliance with the provisions of (5) below, to account for the aesthetic, impervious coverage, and environmental impacts of the construction, installation, and operation, including, but not necessarily limited to, water recapture and filtration, and the conservation plan has been approved; (5) Where solar energy generation facilities, structures, and equipment are installed, the property under the solar panels is used to the greatest extent practicable for the farming of shade crops or other plants capable of being grown under such conditions, or for pasture for grazing; (6) The amount of acreage devoted to the biomass, solar, or wind energy generation facilities, structures, and equipment does not exceed a ratio of one to five acres, or portion thereof, of land devoted to energy generation facilities, structures, and equipment and land devoted to agricultural or horticultural operations; (7) Biomass, solar, or wind energy generation facilities, structures, and equipment are constructed or installed on 10 acres or less of the farmland for which the owner of the property is applying for valuation, assessment and taxation, and if power is being generated, no more than 2 megawatts of power are generated on the 10 acres or less; and (8) for biomass energy generation the owner of the property has obtained the approval of the Department of Agriculture.

Furthermore, the substitute specifies no income from any power or heat sold from the biomass, solar, or wind energy generation may be considered income for purposes of determining eligibility under the "Farmland Assessment Act." The substitute also provides that there is no income requirement for farmland used for biomass, solar, or wind energy generation under the "Farmland Assessment Act."

The substitute empowers the Division of Taxation, in consultation with the Department of Agriculture, to adopt regulation to implement the substitute's provisions regarding the treatment of land used for biomass, solar, or wind energy generation under the "Farmland Assessment Act." With regard to the substitute's requirement that land used for biomass energy generation may not qualify for treatment under the "Farmland Assessment Act" without the approval of the Department of Agriculture, the substitute provides the Department of Agriculture, in consultation with the Department of Environmental Protection, the authority to adopt regulation for that approval process, including but not limited to, the establishment of reasonable application fees, except that no application fee may be charged for preserved farmland.

The substitute also provides that that biomass, solar or wind energy generation facilities installed in the pinelands area must comply with

the Pinelands Protection Act and the comprehensive management plan adopted pursuant thereto.

The substitute charges the Department of Agriculture, in consultation with the SADC and the Department of the Treasury with preparing a program report every two years on the implementation of this substitute.

This substitute is identical to Senate Bill No. 1538 (SS/1R), as also reported by the Committee.

FISCAL IMPACT:

The bill was not certified as requiring a fiscal note.