

CHAPTER 213

AN ACT concerning agriculture and biomass, solar, and wind energy, supplementing P.L.1983, c.32 (C.4:1C-11 et seq.), and amending and supplementing P.L.1983, c.31 and P.L.1964, c.48.

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

C.4:1C-32.4 Certain generation facilities, structures, equipment permitted on preserved farmland.

1. a. Notwithstanding any law, rule or regulation to the contrary, a person who owns preserved farmland may construct, install, and operate biomass, solar, or wind energy generation 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 may make improvements to any agricultural, horticultural, 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 horticultural production, as determined by the committee;

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

(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 (a) in annual energy generation capacity to the previous calendar year's energy demand plus 10 percent, in addition to what is allowed under subsection b. of this section, or alternatively at the option of the landowner (b) 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.

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

b. The limit on the annual energy generation capacity established pursuant to subparagraph (a) of paragraph (4) of subsection a. of this section shall 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 P.L.2009, c.213 (C.4:1C-32.4 et al.).

c. A landowner shall seek and obtain the approval of the committee before constructing, installing, and operating biomass, solar, or wind energy generation facilities, structures, and equipment on the farm as allowed pursuant to subsection a. of this section. The committee shall provide the holder of any development easement on the farm with a copy of the application submitted for the purposes of subsection a. of this section, and the holder of the development easement shall have 30 days within which to provide comments to the committee on the application. The committee shall, within 90 days of receipt, approve, disapprove, or approve with conditions an application submitted for the purposes of subsection a. of this section. The decision of the committee on the application shall be based solely upon the criteria listed in subsection a. of this section and comments received from the holder of the development easement.

d. No fee shall be charged of the landowner for review of an application submitted to, or issuance of a decision by, the committee pursuant to this section.

e. The committee may suspend or revoke an approval issued pursuant to this section for a violation of any term or condition of the approval or any provision of this section.

f. The committee, in consultation with the Department of Environmental Protection and the Department of Agriculture, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation of this section, including provisions prescribing standards concerning impervious cover which may be permitted in connection with biomass, solar, or wind energy generation facilities, structures, and equipment authorized to be constructed, installed, and operated on lands pursuant to this section.

g. In the case of biomass energy generation facilities, structures, or equipment, the landowner shall also seek and obtain the approval of the Department of Agriculture as required pursuant to section 5 of P.L.2009, c.213 (C.4:1C-32.5) if the land is valued, assessed and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

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

i. For the purposes of this section:

"Biomass" means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm and which can be used to generate energy in a sustainable manner.

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

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

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

C.4:1C-9 Commercial farm owners, operators; permissible activities.

6. Notwithstanding the provisions of any municipal or county ordinance, resolution, or regulation to the contrary, the owner or operator of a commercial farm, located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm is in operation as of the effective date of P.L.1998, c.48 (C.4:1C-10.1 et al.), and the operation of which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), or whose specific operation or practice has been determined by the appropriate county board, or in a county

where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety may:

- a. Produce agricultural and horticultural crops, trees and forest products, livestock, and poultry and other commodities as described in the Standard Industrial Classification for agriculture, forestry, fishing and trapping or, after the operative date of the regulations adopted pursuant to section 5 of P.L.2003, c.157 (C.4:1C-9.1), included under the corresponding classification under the North American Industry Classification System;
- b. Process and package the agricultural output of the commercial farm;
- c. Provide for the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards;
- d. Replenish soil nutrients and improve soil tilth;
- e. Control pests, predators and diseases of plants and animals;
- f. Clear woodlands using open burning and other techniques, install and maintain vegetative and terrain alterations and other physical facilities for water and soil conservation and surface water control in wetland areas;
- g. Conduct on-site disposal of organic agricultural wastes;
- h. Conduct agriculture-related educational and farm-based recreational activities provided that the activities are related to marketing the agricultural or horticultural output of the commercial farm;
- i. Engage in the generation of power or heat from biomass, solar, or wind energy, provided that the energy generation is consistent with the provisions of P.L.2009, c.213 (C.4:1C-32.4 et al.), as applicable, and the rules and regulations adopted therefor and pursuant to section 3 of P.L.2009, c.213 (C.4:1C-9.2); and
- j. Engage in any other agricultural activity as determined by the State Agriculture Development Committee and adopted by rule or regulation pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.4:1C-9.2 Committee to develop rules, regulations; BPU to provide technical assistance.

3. a. The committee shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.):

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

(2) 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.

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

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

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

C.54:4-23.3c Land use for taxation purposes.

4. a. (1) No land used for biomass, solar, or wind energy generation shall be considered land in agricultural or horticultural use or actively devoted to agricultural or horticultural use for the purposes of the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-23.1 et seq.), except as provided in this section.

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

b. Land used for biomass, solar, or wind energy generation may be eligible for valuation, assessment and taxation pursuant to P.L.1964, c.48 (C.54:4-23.1 et seq.), provided that:

(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 valuation, assessment and taxation pursuant to P.L.1964, c.48 (C.54:4-23.1 et seq.) is applied for;

(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 or horticultural 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, with provisions for compliance with paragraph (5) of this subsection where applicable, to account for the aesthetic, impervious coverage, and environmental impacts of the construction, installation, and operation of the biomass, solar, or wind energy generation facilities, structures, and equipment, including, but not necessarily limited to, water recapture and filtration, and the conservation plan has been approved by the district;

(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 no more than 10 acres of the farmland for which the owner of the property is applying for valuation, assessment and taxation pursuant to P.L.1964, c.48 (C.54:4-23.1 et seq.), and if power is being generated, no more than two 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 pursuant to section 5 of P.L.2009, c.213 (C.4:1C-32.5).

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

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

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

f. For the purposes of this section:

"Biomass" means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm, or directly obtained from a farm where it was cultivated, harvested, or produced, and which can be used to generate energy in a sustainable manner, except with respect to preserved farmland, "biomass" means the same as that term is defined in section 1 of P.L.2009, c.213 (C.4:1C-32.4).

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

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

C.4:1C-32.5 Approval required.

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

b. The Department of Agriculture, in consultation with the Department of Environmental Protection, shall adopt, pursuant to the "Administrative Procedure Act,"

P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations concerning: (1) 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 (2) the process by which a landowner may apply for the approval required pursuant to subsection a. of this section, 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 farmland as defined in section 1 of P.L.2009, c.213 (C.4:1C-32.4).

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

d. For the purposes of this section, "biomass" means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm, or directly obtained from a farm where it was cultivated, harvested, or produced, and which can be used to generate energy in a sustainable manner, except with respect to preserved farmland, "biomass" means the same as that term is defined in section 1 of P.L.2009, c.213 (C.4:1C-32.4).

C.4:1C-32.6 Report to Governor, Legislature, committees.

6. Every two years, the Department of Agriculture, in consultation with the State Agriculture Development Committee and the Department of the Treasury, shall prepare a report on the implementation of P.L.2009, c.213 (C.4:1C-32.4 et al.). The report shall include: a survey and inventory of all biomass, solar, or wind energy generation facilities, structures, and equipment placed on farmland in accordance with P.L.2009, c.213 (C.4:1C-32.4 et al.); the extent to which existing structures, such as barns, sheds, and silos, are used for those purposes, and how those structures have been modified therefor; the extent to which new structures, instead of existing structures, have been erected; and such other information as either of the departments or the committee deems useful.

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

7. Section 3 of P.L.1964, c.48 (C.54:4-23.3) is amended to read as follows:

C.54:4-23.3 Agricultural use of land.

3. Land shall be deemed to be in agricultural use when devoted to the production for sale of plants and animals useful to man, including but not limited to: forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding, boarding, raising, rehabilitating, training or grazing of any or all of such animals, except that "livestock" shall not include dogs; bees and apiary products; fur animals; trees

and forest products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government, except that land which is devoted exclusively to the production for sale of tree and forest products, other than Christmas trees, and is not appurtenant woodland, shall not be deemed to be in agricultural use unless the landowner fulfills the following additional conditions:

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

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

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

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

(1) agricultural use shall also include biomass, solar, or wind energy generation, provided that the biomass, solar, or wind energy generation is consistent with the provisions of P.L.2009, c.213 (C.4:1C-32.4 et al.), as applicable, and the rules and regulations adopted therefor; and

(2) "biomass" means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm, or directly obtained from a farm where it was cultivated, harvested, or produced, and which can be used to generate energy in a sustainable manner, except with respect to preserved farmland, "biomass" means the same as that term is defined in section 1 of P.L.2009, c.213 (C.4:1C-32.4).

8. Section 4 of P.L.1964, c.48 (C.54:4-23.4) is amended to read as follows:

C.54:4-23.4 Land deemed in horticultural use.

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

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

(1) horticultural use shall also include biomass, solar, or wind energy generation, provided that the biomass, solar, or wind energy generation is consistent with the provisions of P.L.2009, c.213 (C.4:1C-32.4 et al.), as applicable, and the rules and regulations adopted therefor; and

(2) “biomass” means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm, or directly obtained from a farm where it was cultivated, harvested, or produced, and which can be used to generate energy in a sustainable manner, except with respect to preserved farmland, “biomass” means the same as that term is defined in section 1 of P.L.2009, c.213 (C.4:1C-32.4).

9. This act shall take effect immediately, except that sections 4, 7, and 8 of this act shall be applicable to tax years commencing after the date of enactment of this act.

Approved January 16, 2010.