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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO AGRICULTURE AND FORESTRY -- RENEWABLE ENERGY FACILITIES

Introduced By: Senator Louis P. DiPalma

Date Introduced: April 04, 2013

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 2 of the General Laws entitled "AGRICULTURE AND FORESTRY"  
2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 23.3

4 FARM CONSERVATION AND RENEWABLE ENERGY

5 2-23.3-1. Short title. -- This act shall be known and may be cited as the "Farm  
6 Conservation and Renewable Energy Act of 2013."

7 2-23.3-2. Legislative findings and purposes. -- (a) Findings. The general assembly finds  
8 and declares that:

9 (1) Rhode Island agriculture has survived and flourished because it has innovatively  
10 pursued revenue sources that are not typically accounted for in measurements of farm income;

11 (2) Renewable energy facilities have the potential of reducing the operating costs of  
12 farms and of providing additional revenue to farms, which can be critical to maintaining  
13 economically viable agricultural operations;

14 (3) Rhode Island has established preserving farmland and strengthening the viability of  
15 farming in the state as important public purposes, necessary to health and welfare of the people of  
16 the state; and

17 (4) Rhode Island has established ambitious goals for securing energy from renewable  
18 resources, including obtaining sixteen percent (16%) of the electricity consumed in the state from  
19 renewable resources by 2019, and created programs for distributed generation standard contracts

1 (chapter 39-26.2) and net-metering (chapter 39-26.4) to facilitate meeting its energy goals.

2 (5) Historically and currently, farms and farm operations are both energy users and  
3 energy producers from renewable resources; given their parcel size and the absence of  
4 nonagricultural uses, farms can be good locations for locating renewable energy facilities, which  
5 help to meet established goals for obtaining energy from renewable energy sources.

6 (b) Purposes. The purposes of this chapter are to:

7 (1) Conserve farmland by increasing the economic viability of farm operations;

8 (2) Accomplish farmland preservation by restricting the development of non-farm uses in  
9 the area of a farm dedicated to a renewable energy facility from wind resources;

10 (3) Assure that farms of similar size are treated in a consistent manner throughout the  
11 state, with regard to renewable energy facility siting; and

12 (4) Contribute to meeting goals for energy use from renewable energy resources in the  
13 state in a manner that is cost effective.

14 **2-23.3-3. Definitions. --** (a) "Agricultural product" means the product of the propagation,  
15 care, cultivation, raising, and harvesting of the products of truck farming, horticulture, turf,  
16 viticulture, viniculture, floriculture, forestry/tree farming, growing vegetables for farming, sugar  
17 bush, stabling of five (5) or more horses, dairy farming, or aquaculture or the raising of livestock,  
18 including for the production of fiber, furbearing animals, poultry, or bees.

19 (b) "Division" means the division of agriculture within the department of environmental  
20 management.

21 (c) "Farmer" means a person who is the owner or tenant of a farm and is actively engaged  
22 in farming and either files a 1040F U.S. Internal Revenue Form, or otherwise reports income  
23 from farming for income tax purposes with the Internal Revenue Service, and has a state tax  
24 number or is a nonprofit corporation that has as its purpose providing for agriculture.

25 (d) "Flicker" means alternating changes in light intensity caused by the moving blade of a  
26 wind turbine casting shadows on the ground and stationary objects.

27 (e) "Net metering" means net metering as that term is defined and used in chapter 39-  
28 26.4.

29 (f) "Renewable energy facility" means a facility that supplies energy, including but not  
30 limited to, electrical and thermal energy from a renewable energy resource as defined in section  
31 39-26-5.

32 (g) "Self-generator" means a farm-end user of energy in Rhode Island that displaces all or  
33 part of its energy consumption through the use of a customer-sited renewable energy facility.

34 **2-23.3-4. Self-generator and net-metered projects. --** Self-generator and net-metered

1 renewable energy facilities shall be considered integral and necessary part of the agricultural  
2 operation of the farm unit and their location on a farm shall be allowed, consistent with the  
3 operational standards provided for in section 2-23-4.6, and shall not be prohibited for purposes of  
4 agricultural preservation or treated differently for purposes of taxation than the energy supply and  
5 facilities using energy from retail or other commercial suppliers.

6 **2-23.3-5. Siting and operating standards. --** Renewable energy facilities may be located  
7 on farms of farmers providing the following siting and operational standards are met:

8 (1) Flicker -- The renewable energy facility shall not result in more than thirty (30) hours  
9 of flicker on any occupied structure in any calendar year or more than fifteen (15) minutes of  
10 flicker on any occupied structure in any day.

11 (2) Noise -- The renewable energy facility shall not produce, at the property line of the  
12 farm, more than fifty (50) decibels or more than a ten (10) decibel increase over the ambient level  
13 decibel level, which level is the greater.

14 (3) Set back -- The renewable energy facility shall be setback from the property line by at  
15 least the required set back for new buildings or structures, and for renewable energy facilities  
16 using wind resources, by at least one and one tenth (1 1/10) times the maximum height of the  
17 renewable energy facility, and the total area dedicated to the fall zone of a wind turbine shall be at  
18 least equal to the area of a circle with a radius of one and one-quarter (1 1/4) times the maximum  
19 height of the wind turbine.

20 (4) Dedication of fall zone for production of agriculture products. The area fall zone  
21 described in subdivision (3) above shall be dedicated by written agreement for the production of  
22 agricultural products so long as the wind turbine remains standing.

23 **2-23.3-6. Relation to statewide planning standards and guidelines. --** The provisions  
24 of this chapter including, but not limited to, the siting and operational standards provided for in  
25 section 2-23.3-5, shall be deemed to satisfy any guidance or standards issued by the statewide  
26 planning program or the state planning council pursuant to subdivision 42-11-10 (f)(7).

27 **2-23.3-7. Duties of the division. --** (a) The division shall, in consultation with the office  
28 of energy resources, determine whether a proposed renewable energy facility subject to the  
29 provisions of this chapter is consistent with the siting and operating standards provided for in  
30 section 2-23.3-7 and whether the proposed renewable energy facility qualifies as a self-generator  
31 or net-metered project.

32 (b) The division shall issue a "certificate of conformity" to a farmer:

33 (1) If the division determines that a proposed renewable energy facility would be  
34 consistent with the siting and operating standards provided for in section 2-23.3-5;

1           (2) If the division determines that a proposed renewable energy facility would also meet  
2 the requirements for a self-generator or net-metered project as provided for in section 2-23.3-4,  
3 the division shall so certify; and

4           (3) The certificate at the discretion of the division may include such requirements and/or  
5 provisions as the division deems necessary to assure that the renewable energy facility will be in  
6 conformity with the requirements of this chapter during the period of its operation.

7           (c) The certificate of the division shall be deemed a determination that a renewable  
8 energy facility meets the requirements of this chapter.

9           (d) The division may issue such forms and establish such application requirements,  
10 including reasonable applications fees, which may be based on the size and/or complexity of the  
11 proposed renewable energy facility, and such procedures as it deems necessary to administer the  
12 provisions of this chapter.

13           **2-23.3-8. Construction. --** This chapter, being necessary for the welfare of the state and  
14 its inhabitants, shall be liberally construed so as to effectuate its purposes.

15           **2-23.3-9. Severability. --** If any clause, sentence, paragraph, section, or part of this  
16 chapter shall be adjudged by any court of competent jurisdiction to be invalid, that judgment shall  
17 not affect, impair, or invalidate the remainder of the chapter, but shall be confined in its operation  
18 to the clause, sentence, paragraph, section, or part directly involved in the controversy in which  
19 that judgment shall have been rendered.

20           SECTION 2. Section 45-24-37 of the General Laws in Chapter 45-24 entitled "Zoning  
21 Ordinances" is hereby amended to read as follows:

22           **45-24-37. General provisions -- Permitted uses. --** (a) The zoning ordinance provides a  
23 listing of all land uses and/or performance standards for uses which are permitted within the  
24 zoning use districts of the municipality.

25           (b) Notwithstanding any other provision of this chapter, the following uses are permitted  
26 uses within all residential zoning use districts of a municipality and all industrial and commercial  
27 zoning use districts except where residential use is prohibited for public health or safety reasons:

- 28           (1) Households;
- 29           (2) Community residences; and
- 30           (3) Family day care homes.

31           (c) Any time a building or other structure used for residential purposes, or a portion of a  
32 building containing residential units, is rendered uninhabitable by virtue of a casualty such as fire  
33 or flood, the owner of the property is allowed to park, temporarily, mobile and manufactured  
34 home or homes, as the need may be, elsewhere upon the land, for use and occupancy of the

1 former occupants for a period of up to twelve (12) months, or until the building or structure is  
2 rehabilitated and otherwise made fit for occupancy. The property owner, or a properly designated  
3 agent of the owner, is only allowed to cause the mobile and manufactured home or homes to  
4 remain temporarily upon the land by making timely application to the local building official for  
5 the purposes of obtaining the necessary permits to repair or rebuild the structure.

6 (d) Notwithstanding any other provision of this chapter, appropriate access for people  
7 with disabilities to residential structures is allowed as a reasonable accommodation for any  
8 person(s) residing, or intending to reside, in the residential structure.

9 (e) Notwithstanding any other provision of this chapter, an accessory family dwelling  
10 unit in an owner-occupied, single-family residence shall be permitted as a reasonable  
11 accommodation only for family members with disabilities. The appearance of the structure shall  
12 remain that of a single-family residence and there shall be an internal means of egress between  
13 the principal unit and the accessory family dwelling unit. If possible, no additional exterior  
14 entrances should be added. Where additional entrance is required, placement should generally be  
15 in the rear or side of the structure. When the structure is serviced by an individual sewage  
16 disposal system, the applicant shall have the existing or any new system approved by the  
17 department of environmental management. The zoning enforcement officer shall require that a  
18 declaration of the accessory family dwelling unit for the family member or members and its  
19 restrictions be recorded in the land evidence records and filed with the zoning enforcement officer  
20 and the building official. Once the family member or members with disabilities no longer resides  
21 in the premises on a permanent basis, or the title is transferred, the property owner shall notify the  
22 zoning official in writing, and the accessory family dwelling unit shall no longer be permitted,  
23 unless there is a subsequent, valid application.

24 (f) When used in this section the terms "people with disabilities" or "member or  
25 members with disabilities" means a person(s) who has a physical or mental impairment which  
26 substantially limits one or more major life activities, as defined in section 34-37-3 of the general  
27 laws.

28 (g) Notwithstanding any other provisions of this chapter, plant agriculture is a permitted  
29 use within all zoning districts of a municipality, including all industrial and commercial zoning  
30 districts, except where prohibited for public health or safety reasons or the protection of wildlife  
31 habitat.

32 (h) Notwithstanding any other provisions of this chapter, renewable energy facilities  
33 located on farms in accordance with chapter 2-23.3 are a permitted use within all zoning districts  
34 of a municipality, including all industrial and commercial zoning districts.

1 SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO AGRICULTURE AND FORESTRY -- RENEWABLE ENERGY FACILITIES

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- 1 This act would regulate the placement of renewable energy facilities on farmlands.
- 2 This act would take effect upon passage.

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