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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO AGRICULTURE AND FORESTRY - FARM CONSERVATION AND
RENEWABLE ENERGY

Introduced By: Representative Teresa A. Tanzi

Date Introduced: March 31, 2017

Referred To: House Municipal Government

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.**

6 This chapter shall be known and may be cited as the "Farm Conservation and Renewable
7 Energy Act of 2017."

8 **2-23.3-2. Legislative findings.**

9 The general assembly finds and declares that:

10 (1) Renewable energy facilities can reduce the operating costs of farms and provide
11 critical revenue to maintain economically viable agricultural operations;

12 (2) Preserving farmland and strengthening the viability of farming are essential public
13 purposes, necessary to the health and welfare of the people of the state;

14 (3) Farms are significant energy consumers and given the size and openness of many of
15 Rhode Island's farms, they can be good locations for renewable energy facilities;

16 (4) There is an acute shortage of clean energy available to meet the state's established
17 goals for distributed generation;

18 (5) Action must be taken immediately to assure the availability of such clean energy from

1 local sources; and

2 (6) It is necessary that each city and town provide opportunities for the establishment of
3 renewable energy within its borders.

4 **2-23.3-3. Definitions.**

5 As used in this chapter:

6 (1) "Agricultural product" means the product of the propagation, care, cultivation, raising,
7 and harvesting of the products of truck farming, horticulture, turf, viticulture, viniculture,
8 floriculture, forestry/tree farming, growing vegetables for farming, livestock, meat, dairy, wool
9 and sugar bush or the production of fiber.

10 (2) "Farmer" means the principal person engaged in agricultural operations as indicated
11 for income tax purposes who owns, operates or leases farmland.

12 (3) "Farmland" means any tract(s) of land, exclusive of a house site, that meets any one
13 of the following conditions and that has a current U.S. Department of Agriculture conservation
14 plan, either applied for or in force within the past ten (10) years:

15 (i) Land that is actively devoted to "agricultural or horticultural use" as set forth in
16 "agricultural operations" which includes any commercial enterprise that has as its primary
17 purpose horticulture, viticulture, viniculture, floriculture, forestry, stabling of horses, dairy
18 farming, or aquaculture, or the raising of livestock, furbearing animals, poultry, or bees;

19 (ii) Land that constitutes a "farm unit" which means land owned by the farmer, including
20 woodland and wetlands, at least five (5) acres of which are actively devoted to agricultural and
21 horticultural use and which have produced an annual gross income from the sale of its farm
22 products of at least two thousand five hundred dollars (\$2,500) in one of the two (2) preceding
23 years;

24 (iii) Land that is actively devoted to agricultural and horticultural use by a "subsistence
25 farmer" who derives their primary means of sustenance from the consumption of agricultural
26 products grown on their land where non-farm related income from the land must be low enough
27 to make the property eligible for assistance under title 20 programs; or

28 (iv) Land that meets the qualifications for payments from the federal government for a
29 conservation set aside, or that has a combination of income, crop and acreage that, in the Rhode
30 Island department of environmental management ("RIDEM") director of agriculture's opinion,
31 qualifies the land as a farm.

32 (4) "Flicker" means alternating changes in light intensity caused when the moving blades
33 of a wind turbine cast periodic shadows on restricted openings such as windows on structures.

34 (5) "Livestock" means horses, cows, sheep, poultry or bees or other living creatures kept

1 for use and profit.

2 (6) "Lot coverage" means the percentage of the lot area covered by any building or
3 structure when viewed in horizontal plan view.

4 (7) "Renewable energy facility" means a facility that supplies energy, including, but not
5 limited to, electrical and thermal energy, from a renewable energy resource as defined in §39-26-
6 5.

7 **2-23.3-4. Renewable energy facilities as a permitted accessory use on farmland.**

8 (a) Commencing August 1, 2017, renewable energy facilities shall be a permitted
9 accessory use, as defined by §45-24-31, on farmland of at least fifteen (15) contiguous acres, that
10 is not protected, preserved, or otherwise designated under chapter 27 of title 44, chapter 82 of title
11 42, chapter 39 of title 34, or chapter 36 of title 45. This provision is not intended to preclude
12 future protection of farmland with accessory renewable energy facilities.

13 (b) All renewable energy projects proposed under this chapter must meet the following
14 siting and operating standards:

15 (1) The facility shall have a lot coverage of not more than twenty percent (20%) of the
16 farmland's total land area;

17 (2) Power distribution lines shall be located underground, unless the electric distribution
18 company or site characteristics do not allow;

19 (3) The facility shall not:

20 (i) Be constructed, installed or modified as provided in this section without first
21 undergoing municipal site plan review and obtaining a building permit;

22 (ii) Interfere unduly with the current and future agricultural use of the farmland, beyond
23 as would ordinarily be anticipated with the types of uses contemplated by this chapter;

24 (iii) Be inconsistent with the restrictions set forth in any conservation easement, if
25 applicable; or

26 (iv) Interfere with state, local, or federal restrictions placed on funds used to purchase a
27 conservation easement on any portion of the farmland, if applicable;

28 (4) With respect to any wind facility, the facility shall comply with the following siting
29 guidelines:

30 (i) Siting in a manner that minimizes any sound impacts on surrounding properties and
31 does not exceed the maximum permissible sound requirements in the applicable zone at
32 surrounding properties lines;

33 (ii) Siting in a manner that minimizes flicker on surrounding properties. Flicker will be
34 limited to no more than thirty (30) hours per year, using real-case scenario modeling, at occupied

1 structures or sites permitted for occupied structures under construction at the time of construction
2 of the wind facility, excluding any structures located on the farmland; and

3 (iii) Setbacks shall be at least the turbine height plus applicable municipal zoning
4 setbacks from all property lines except those properties owned, leased or controlled by an
5 easement benefitting the project developer;

6 (5) With respect to any solar facility, the owner of the facility shall ensure that:

7 (i) The land beneath any solar panel or array remains useable for one or more agricultural
8 purposes including, but not limited to, grazing, beekeeping, or growing crops;

9 (ii) Reseeding underneath the solar facility is done with grass or low growth vegetation is
10 listed in the University of Rhode Island's native plant database and that any invasive species are
11 controlled or eliminated, to the extent practicable without the use of herbicides;

12 (iii) Any stormwater generated from the solar facility is managed in accordance with the
13 RIDEM's stormwater manual, prioritizing green infrastructure best management practices;

14 (iv) Siting of solar facilities is designed to minimize soil disturbance to prime and
15 important farmland as listed by the natural resources conservation service and Rhode Island
16 department of administration's division of planning through the use of pile driven or ballast block
17 footings, only, whichever is more appropriate for the site; and

18 (v) A vegetated buffer consisting of plants listed in the University of Rhode Island's
19 native plant database surrounds the perimeter to serve as a visual screen of the installation to the
20 extent practicable.

21 (6) Any facility located within a special flood hazard area as defined by the Federal
22 Emergency Management Agency shall be anchored in a manner sufficient to resist collapse,
23 flotation, or movement during flood or storm events;

24 (7) Clearing of natural vegetation from the farmland shall be limited to what is necessary
25 for the construction, operation and maintenance of the facility;

26 (8) No topsoil shall be disturbed or removed from the farmland except as is necessary for
27 the installation of the facility, nor shall the site of the facility be covered with gravel with the
28 exception of access and maintenance roads.

29 **2-23.3-5. Removal requirements.**

30 (a) Any renewable energy facility that has reached the end of its useful life or has been
31 abandoned on farmland shall be decommissioned no more than one hundred and eighty (180)
32 days after the date of discontinued operations.

33 (b) The owner or operator shall notify the municipality by certified mail of the proposed
34 date of discontinued operations and plans for removal. Decommissioning shall consist of:

1 (1) Physical removal of all large-scale ground-mounted solar photovoltaic installations,
2 structures, equipment, security barriers and transmission lines from the site;

3 (2) Disposal of all solid and hazardous waste in accordance with local, state, and federal
4 waste disposal regulations; and

5 (3) Stabilization or re-vegetation of the site as necessary to minimize erosion.

6 (c) The municipality may allow the owner or operator of the facility to leave landscaping
7 or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

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

10 **45-24-37. General provisions -- Permitted uses. [Effective January 1, 2017.]**

11 (a) The zoning ordinance provides a listing of all land uses and/or performance standards
12 for uses that are permitted within the zoning use districts of the municipality.

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

16 (1) Households;

17 (2) Community residences; and

18 (3) Family day care homes.

19 (c) Any time a building or other structure used for residential purposes, or a portion of a
20 building containing residential units, is rendered uninhabitable by virtue of a casualty such as fire
21 or flood, the owner of the property is allowed to park, temporarily, mobile and manufactured
22 home, or homes, as the need may be, elsewhere upon the land, for use and occupancy of the
23 former occupants for a period of up to twelve (12) months, or until the building or structure is
24 rehabilitated and otherwise made fit for occupancy. The property owner, or a properly designated
25 agent of the owner, is only allowed to cause the mobile and manufactured home, or homes, to
26 remain temporarily upon the land by making timely application to the local building official for
27 the purposes of obtaining the necessary permits to repair or rebuild the structure.

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

31 (e) Notwithstanding any other provision of this chapter, an accessory family dwelling
32 unit in an owner-occupied, single-family residence shall be permitted as a reasonable
33 accommodation for family members with disabilities or who are sixty-two (62) years of age or
34 older. The appearance of the structure shall remain that of a single-family residence and there

1 shall be an internal means of egress between the principal unit and the accessory family dwelling
2 unit. If possible, no additional exterior entrances should be added. Where additional entrance is
3 required, placement should generally be in the rear or side of the structure. When the structure is
4 serviced by an individual, sewage-disposal system, the applicant shall have the existing or any
5 new system approved by the department of environmental management. The zoning-enforcement
6 officer shall require that a declaration of the accessory family dwelling unit for the family
7 member, or members, and its restrictions be recorded in the land-evidence records and filed with
8 the zoning-enforcement officer and the building official. Once the family member, or members,
9 with disabilities or who are sixty-two (62) years of age or older, no longer reside(s) in the
10 premises on a permanent basis, or the title is transferred, the property owner shall notify the
11 zoning official in writing, and the accessory family-dwelling unit shall no longer be permitted,
12 unless there is a subsequent, valid application.

13 (f) When used in this section the terms "people with disabilities" or "member, or
14 members, with disabilities" means a person(s) who has a physical or mental impairment that
15 substantially limits one or more major life activities, as defined in § 42-87-1(7) of the general
16 laws.

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

21 (h) Notwithstanding any other provisions of this chapter, renewable energy facilities are a
22 permitted accessory use for all farmland of at least fifteen (15) contiguous acres, pursuant to
23 chapter 23.3 of title 2.

24 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 - FARM CONSERVATION AND
RENEWABLE ENERGY

- 1 This act would provide for the siting and operating standards for farm-based renewable
- 2 energy facilities.
- 3 This act would take effect upon passage.

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