2017 -- H 6062

STATE OF RHODE ISLAND
IN GENERAL ASSEMBLY
JANUARY SESSION, A.D. 2017

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:

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

CHAPTER 23.3
FARM CONSERVATION AND RENEWABLE ENERGY

2-23.3-1. Short title.

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

2-23.3-2. Legislative findings.

The general assembly finds and declares that:

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

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

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

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

(5) Action must be taken immediately to assure the availability of such clean energy from...
local sources; and

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

2-23.3-3. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

(5) "Livestock" means horses, cows, sheep, poultry or bees or other living creatures kept
for use and profit.

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

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

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

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

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

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

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

(3) The facility shall not:

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

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

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

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

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

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

   (ii) Siting in a manner that minimizes flicker on surrounding properties. Flicker will be limited to no more than thirty (30) hours per year, using real-case scenario modeling, at occupied...
structures or sites permitted for occupied structures under construction at the time of construction of the wind facility, excluding any structures located on the farmland; and

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

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

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

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

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

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

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

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

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

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

2-23.3-5. Removal requirements.

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

(b) The owner or operator shall notify the municipality by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:
(1) Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site;

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

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

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

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

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

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

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

(1) Households;

(2) Community residences; and

(3) Family day care homes.

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

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

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

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

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

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

SECTION 3. This act shall take effect upon passage.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

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RELATING TO AGRICULTURE AND FORESTRY - FARM CONSERVATION AND
RENEWABLE ENERGY

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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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