SENATE, No. 498

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
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SYNOPSIS

Permits DEP to enter into solar energy redevelopment agreements with owners or operators of sanitary landfill facilities under certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning solar electric power development at sanitary landfill facilities and supplementing P.L.1981, c.306 (C.13:1E-100 et seq.).

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

1. a. The provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary notwithstanding, the State may enter into a solar energy redevelopment agreement with a developer, for the purpose of constructing a solar electric power generating facility on a properly closed sanitary landfill facility pursuant to the provisions of this section.

b. The Commissioner of Environmental Protection, in consultation with the Board of Public Utilities, may negotiate the terms and conditions of a solar energy redevelopment agreement when the total expenses projected for the proper closure of a sanitary landfill facility exceed the amount of funds available for closure in the account established pursuant to section 10 of the "Sanitary Landfill Closure and Contingency Fund Act," P.L.1981, c.306 (C.13:1E-109), or the account established pursuant to section 6 of P.L.2013, c.69 (13:1E-125.6). When evaluating a solar energy redevelopment agreement, the commissioner shall consider the following factors:

(1) the economic feasibility of the solar electric power generating facility;

(2) the degree to which the solar electric power generating facility will advance State greenhouse gas emissions goals;

(3) the likelihood that sufficient revenue from the solar electric power generating facility will, upon completion, offset the cost of post-closure monitoring activities at the sanitary landfill facility; and

(4) whether to require the owner or operator of the sanitary landfill facility to establish any additional financial assurance to finance the proper closure of the sanitary landfill facility.

c. The commissioner shall evaluate the environmental and public health viability and safety of the solar electric power generating facility proposed on the site in addition to environmental review of the closure plan. The commissioner may require the submission of any environmental and engineering reports that the commissioner deems relevant or necessary to the evaluation of the project. It is solely within the discretion of the commissioner to enter into a solar energy redevelopment agreement based upon the environmental and public health and safety of the proposed project.

d. The commissioner shall negotiate the terms and conditions of the solar energy redevelopment agreement on behalf of the State. The agreement shall specify:

(1) the amount of revenue from the solar electric power generating facility to be dedicated to costs of closure of the sanitary landfill facility and the financial mechanism to be used for that purpose;

(2) the amount of financial assurance the owner or operator of the sanitary landfill facility shall provide;

(3) the timetable for proper closure of the sanitary landfill facility and the subsequent installation of a solar electric power generating facility;

(4) that the owner or operator of the sanitary landfill facility shall agree to perform and complete any closure activity or remediation as may be required by the Department of Environmental Protection, pursuant to law, to ensure the environmentally sound and proper closure and remediation of the sanitary landfill facility. Any activity necessary to remediate ground or surface water contamination caused by a sanitary landfill facility shall be undertaken in compliance with the remediation standards adopted by the department pursuant to P.L.1993, c.139 (C.58:10B-1 et al.); and

(5) that if the owner or operator of a sanitary landfill facility has not established an account pursuant to section 10 of the "Sanitary Landfill Closure and Contingency Fund Act," P.L.1981, c.306 (C.13:1E-109), that such a fund shall be established, with the amount of money to be deposited into the fund determined by the commissioner.

e. The State may not enter into any solar energy redevelopment agreement unless the owner or operator has secured a license pursuant to P.L.1983, c.392 (C.13:1E-126 et seq.), related to the closure of the sanitary landfill facility.

f. After the owner or operator has entered into a solar energy redevelopment agreement with the State, the commissioner shall submit a copy thereof to the clerk of the municipality in which the sanitary landfill facility is located and the Board of Public Utilities.

g. The owner or operator of the sanitary landfill facility shall revise and re-certify closure costs with a New Jersey licensed professional engineer and submit to the department actual and projected revenues from the solar electric power generating facility every two years after commencement of approved activities at the sanitary landfill facility. In the event of an increase in costs or a decrease in revenue, the owner or operator of the sanitary landfill facility shall increase the amount of financial assurance to an amount at least equal to the new estimate. If the closure cost estimate decreases or the actual revenue from the solar electric power generating facility increases after a periodic review, the owner or operator of the sanitary landfill facility may file a written request with the department to decrease the amount of the financial assurance, supported by a certification by a New Jersey licensed professional engineer of the details of the decrease in the cost

estimate, as applicable. Financial assurance may be decreased to the amount of the new estimate upon written approval of the department.

h. The department shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt any rules and regulations necessary for the implementation of this act.

i. As used in this section:

"Solar energy redevelopment agreement" means an agreement with the State under which the owner or operator of a sanitary landfill facility uses anticipated revenues from a solar electric power generating facility located on the site of the sanitary landfill facility to assist in financing closure of the site. Such an agreement may not include the costs incurred in securing separate financing for closure of the site.

2. This act shall take effect immediately.

STATEMENT

This bill would permit the Department of Environmental Protection to enter into a solar energy redevelopment agreement with the owner or operator of a sanitary landfill facility when the total expenses projected for the closure of a sanitary landfill facility exceed the amount of funds in the account established pursuant to the "Sanitary Landfill Closure and Contingency Fund Act," and other mandatory escrow accounts.

The bill defines a solar energy redevelopment agreement as an agreement with the State where the owner or operator uses anticipated revenues from a solar electric power generating facility located on a sanitary landfill facility to assist in financing the closure of the site. The Commissioner of Environmental Protection would negotiate the agreement in consultation with the Board of Public Utilities, considering (1) the economic feasibility of the solar electric power generating facility; (2) the degree to which the solar electric power generating facility will advance State greenhouse gas emissions goals; (3) the likelihood that sufficient revenue from the solar electric power generating facility will, upon completion, offset the cost of post-closure monitoring activities at the sanitary landfill facility; and (4) whether to require the owner or operator of the sanitary landfill facility to establish any additional financial assurance to finance the proper closure of the sanitary landfill facility. The department would also evaluate the environmental and public health viability and safety of the proposed project, and the commissioner would have sole discretion in to enter, or decline to enter into a solar energy agreement based upon the environmental and public health safety of the proposed project.

The solar energy redevelopment agreement would be required to specify the amount of revenue from the solar electric power generating facility to be dedicated to costs of closure of the sanitary landfill facility, the amount of financial assurance the owner or operator shall provide, the timetable for the proper closure of the sanitary landfill facility and subsequent installation of a solar electric power generating facility, and that the owner or operator of the sanitary landfill facility shall agree to perform any closure activity or remediation as may be required by the department. If an owner or operator of a sanitary landfill facility has not established an account pursuant to the "Sanitary Landfill Closure and Contingency Fund Act," then the agreement shall also specify that such a fund shall be established with the amount of money to be deposited into the fund determined by the commissioner. The bill also provides that the State may not enter into a solar energy redevelopment agreement unless the owner or operator of the sanitary landfill facility is licensed pursuant to P.L.1983, c.392 (C.13:1E-126 et seq.).

The bill also provides that the commissioner would provide a copy of the solar energy redevelopment agreement to the municipality in which the sanitary landfill facility is located, and to the Board of Public Utilities. Furthermore the owner or operator would be required to revise and re-certify the closure costs and solar energy revenues every two years. The owner or operator is responsible for providing financial assurance in the event of a cost increase or revenue decrease, and the department may decrease the financial assurance required if costs decrease or revenue increases. The act would also require the department to adopt rules and regulation to implement the bill pursuant to the "Administrative Procedure Act."