

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2188

Introduced by Assembly Member Muratsuchi

February 20, 2014

An act to ~~add Section 17959.2 to the Health and Safety Code~~ amend Section 714 of the Civil Code, and to amend Section 65850.5 of the Government Code, relating to solar energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2188, as amended, Muratsuchi. Solar energy: permits.

Existing

(1) *Existing* law provides that it is the policy of the state to promote and encourage the use of solar energy systems, as defined, and to limit obstacles to their use. Existing law states that the implementation of consistent statewide standards to achieve timely and cost-effective installation of solar energy systems is not a municipal affair, but is instead a matter of statewide concern. Existing law requires a city or county to administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. *Existing law requires a solar energy system for heating water to be certified by the Solar Rating Certification Corporation or another nationally recognized certification agency.*

This bill would *specify that these provisions apply to a charter city. The bill would additionally require a city or city, county, or city and county to process and approve any permit application for a residential rooftop solar energy system of up to 10kW on the same day it has been submitted* adopt, on or before September 30, 2015, an ordinance that creates an expedited, streamlined permitting process for small

residential rooftop solar energy systems, as specified. The bill would additionally require a city, county, or city and county to inspect a small residential rooftop solar energy system eligible for expedited review within 2 business days of any request, as specified, and to perform only one inspection, as specified. The bill would prohibit a city, county, or city and county from conditioning the approval of any solar energy system permit on approval of that system by an association that manages a common interest development. The bill would require a solar energy system for heating water to be certified by an accredited listing agency, as defined.

(2) Existing law prohibits any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property, and any provision of a governing document from effectively prohibiting or restricting the installation or use of a solar energy system. Existing law exempts from that prohibition provisions that impose reasonable restrictions on a solar energy system that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance. Existing law defines the term “significantly,” for these purposes, with regard to solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, to mean an amount exceeding 20% of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20%, and with regard to photovoltaic systems that comply with state and federal law, an amount not to exceed \$2,000 over the system cost or a decrease in system efficiency of an amount exceeding 20%, as specified. Existing law requires a solar energy system for heating water subject to the provisions described above to be certified by the Solar Rating Certification Corporation or another nationally recognized certification agency.

This bill would instead define the term “significantly,” for these purposes, with regard to solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, to mean an amount exceeding 10% of the cost of the system, not to exceed \$1,000, or decreasing the efficiency of the solar energy system by an amount exceeding 10%, and with regard to photovoltaic system that comply with state and federal law, an amount not to exceed \$1,000 over the system cost or a decrease in system efficiency of an amount exceeding 10%, as specified. The bill would require a solar energy

system for heating water subject to the provisions described above to be certified by an accredited listing agency, as defined.

(3) Existing law requires an application for approval for the installation or use of a solar energy system to be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and prohibits the approver from willfully avoiding or delaying approval. Existing law requires the approving entity to notify the applicant in writing within 60 days of receipt of the application if the application is denied, as specified.

The bill would instead require the approving entity to notify the applicant in writing within 30 days of receipt of the application if the application is denied, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) In recent years, the state has both encouraged the
- 4 development of innovative distributed generation technology and
- 5 prioritized the widespread adoption of solar power as a renewable
- 6 energy resource through programs such as the California Solar
- 7 Initiative.

1 (b) Rooftop solar energy is a leading renewable energy
2 technology that will help this state reach its energy and
3 environmental goals.

4 (c) To reach the state’s Million Solar Roofs goal, hundreds of
5 thousands of additional rooftop solar energy systems will need to
6 be deployed in the coming years.

7 (d) Various studies, including one by the Lawrence Berkeley
8 National Laboratory, show that, despite the 1978 California Solar
9 Rights Act, declaring that the “implementation of consistent
10 statewide standards to achieve the timely and cost-effective
11 installation of solar energy systems is not a municipal affair ... but
12 is instead a matter of statewide concern,” the permitting process
13 governing the installation of rooftop solar energy systems varies
14 widely across jurisdictions and, contrary to the intent of the law,
15 is both an “obstacle” to the state’s clean energy and greenhouse
16 reduction goals and a “burdensome cost” to homeowners,
17 businesses, schools, and public agencies.

18 (e) The United States Department of Energy, through its SunShot
19 Initiative, has distributed millions of dollars in grants to local and
20 state governments, including California jurisdictions, and nonprofit
21 organizations to reduce the costs of distributed solar through
22 streamlined and standardized permitting.

23 (f) A modernized and standardized permitting process for
24 installations of small-scale solar distributed generation technology
25 on residential rooftops will increase the deployment of solar
26 distributed generation, help to expand access to lower income
27 households, provide solar customers greater installation ease,
28 improve the state’s ability to reach its clean energy goals, and
29 generate much needed jobs in the state, all while maintaining
30 safety standards.

31 *SEC. 2. Section 714 of the Civil Code is amended to read:*

32 714. (a) Any covenant, restriction, or condition contained in
33 any deed, contract, security instrument, or other instrument
34 affecting the transfer or sale of, or any interest in, real property,
35 and any provision of a governing document, as defined in Section
36 4150 or 6552, that effectively prohibits or restricts the installation
37 or use of a solar energy system is void and unenforceable.

38 (b) This section does not apply to provisions that impose
39 reasonable restrictions on solar energy systems. However, it is the
40 policy of the state to promote and encourage the use of solar energy

1 systems and to remove obstacles thereto. Accordingly, reasonable
2 restrictions on a solar energy system are those restrictions that do
3 not significantly increase the cost of the system or significantly
4 decrease its efficiency or specified performance, or that allow for
5 an alternative system of comparable cost, efficiency, and energy
6 conservation benefits.

7 (c) (1) A solar energy system shall meet applicable health and
8 safety standards and requirements imposed by state and local
9 permitting authorities, *consistent with Section 65850.5 of the*
10 *Government Code.*

11 (2) ~~A~~ Every solar energy system for heating water shall be
12 certified by ~~the Solar Rating Certification Corporation (SRCC) or~~
13 ~~other nationally recognized certification agencies. SRCC is a~~
14 ~~nonprofit third party supported by the United States Department~~
15 ~~of Energy. The certification shall be for the entire solar energy~~
16 ~~system and installation~~ *an accredited listing agency as defined in*
17 *Section 65850.5 of the Government Code.*

18 (3) A solar energy system for producing electricity shall also
19 meet all applicable safety and performance standards established
20 by the National Electrical Code, the Institute of Electrical and
21 Electronics Engineers, and accredited testing laboratories such as
22 Underwriters Laboratories and, where applicable, rules of the
23 Public Utilities Commission regarding safety and reliability.

24 (d) For the purposes of this section:

25 (1) (A) For solar domestic water heating systems or solar
26 swimming pool heating systems that comply with state and federal
27 law, “significantly” means an amount exceeding ~~20~~ 10 percent of
28 the cost of the system, *but in no case more than one thousand*
29 *dollars (\$1,000)*, or decreasing the efficiency of the solar energy
30 system by an amount exceeding ~~20~~ 10 percent, as originally
31 specified and proposed.

32 (B) For photovoltaic systems that comply with state and federal
33 law, “significantly” means an amount not to exceed ~~two one~~
34 ~~thousand dollars (\$2,000)~~ *(\$1,000)* over the system cost as
35 originally specified and proposed, or a decrease in system
36 efficiency of an amount exceeding ~~20~~ 10 percent as originally
37 specified and proposed.

38 (2) “Solar energy system” has the same meaning as defined in
39 paragraphs (1) and (2) of subdivision (a) of Section 801.5.

1 (e) (1) Whenever approval is required for the installation or
 2 use of a solar energy system, the application for approval shall be
 3 processed and approved by the appropriate approving entity in the
 4 same manner as an application for approval of an architectural
 5 modification to the property, and shall not be willfully avoided or
 6 delayed.

7 (2) For an approving entity that is an association, as defined in
 8 Section 4080 or 6528, and that is not a public entity, both of the
 9 following shall apply:

10 (A) The approval or denial of an application shall be in writing.

11 (B) If an application is not denied in writing within ~~60~~ 30 days
 12 from the date of receipt of the application, the application shall be
 13 deemed approved, unless that delay is the result of a reasonable
 14 request for additional information.

15 (f) Any entity, other than a public entity, that willfully violates
 16 this section shall be liable to the applicant or other party for actual
 17 damages occasioned thereby, and shall pay a civil penalty to the
 18 applicant or other party in an amount not to exceed one thousand
 19 dollars (\$1,000).

20 (g) In any action to enforce compliance with this section, the
 21 prevailing party shall be awarded reasonable attorney’s fees.

22 (h) (1) A public entity that fails to comply with this section
 23 may not receive funds from a state-sponsored grant or loan program
 24 for solar energy. A public entity shall certify its compliance with
 25 the requirements of this section when applying for funds from a
 26 state-sponsored grant or loan program.

27 (2) A local public entity may not exempt residents in its
 28 jurisdiction from the requirements of this section.

29 *SEC. 3. Section 65850.5 of the Government Code is amended*
 30 *to read:*

31 65850.5. (a) The implementation of consistent statewide
 32 standards to achieve the timely and cost-effective installation of
 33 solar energy systems is not a municipal affair, as that term is used
 34 in Section 5 of Article XI of the California Constitution, but is
 35 instead a matter of statewide concern, *therefore, this section shall*
 36 *apply to every city in this state, including charter cities.* It is the
 37 intent of the Legislature that local agencies not adopt ordinances
 38 that create unreasonable barriers to the installation of solar energy
 39 systems, including, but not limited to, design review for aesthetic
 40 purposes, and not unreasonably restrict the ability of homeowners

1 and agricultural and business concerns to install solar energy
2 systems. It is the policy of the state to promote and encourage the
3 use of solar energy systems and to limit obstacles to their use. It
4 is the intent of the Legislature that local agencies comply not only
5 with the language of this section, but also the legislative intent to
6 encourage the installation of solar energy systems by removing
7 obstacles to, and minimizing costs of, permitting for such systems.

8 (b) A city or county shall administratively approve applications
9 to install solar energy systems through the issuance of a building
10 permit or similar nondiscretionary permit. Review of the
11 application to install a solar energy system shall be limited to the
12 building official's review of whether it meets all health and safety
13 requirements of local, state, and federal law. The requirements of
14 local law shall be limited to those standards and regulations
15 necessary to ensure that the solar energy system will not have a
16 specific, adverse impact upon the public health or safety. However,
17 if the building official of the city or county ~~has a good faith belief~~
18 *makes a finding, based on substantial evidence*, that the solar
19 energy system could have a specific, adverse impact upon the
20 public health and safety, the city or county may require the
21 applicant to apply for a use permit.

22 (c) ~~A city or city, county, or city and county~~ may not deny an
23 application for a use permit to install a solar energy system unless
24 it makes written findings based upon substantial evidence in the
25 record that the proposed installation would have a specific, adverse
26 impact upon the public health or safety, and there is no feasible
27 method to satisfactorily mitigate or avoid the specific, adverse
28 impact. The findings shall include the basis for the rejection of
29 potential feasible alternatives of preventing the adverse impact.

30 (d) The decision of the building official pursuant to subdivisions
31 (b) and (c) may be appealed to the planning commission of the
32 ~~city or city, county, or city and county~~.

33 (e) Any conditions imposed on an application to install a solar
34 energy system shall be designed to mitigate the specific, adverse
35 impact upon the public health and safety at the lowest cost possible.

36 (f) (1) A solar energy system shall meet applicable health and
37 safety standards and requirements imposed by state and local
38 permitting authorities.

39 (2) ~~A~~ Every solar energy system for heating water shall be
40 certified by ~~the Solar Rating Certification Corporation (SRCC) or~~

1 ~~other nationally recognized certification agency. SRCC is a~~
2 ~~nonprofit third party supported by the United States Department~~
3 ~~of Energy. The certification shall be for the entire solar energy~~
4 ~~system and installation~~ *an accredited listing agency.*

5 (3) A solar energy system for producing electricity shall meet
6 all applicable safety and performance standards established by the
7 National Electrical Code, the Institute of Electrical and Electronics
8 Engineers, and accredited testing laboratories such as Underwriters
9 Laboratories and, where applicable, rules of the Public Utilities
10 Commission regarding safety and reliability.

11 (g) *On or before September 30, 2015, every city, county, or city*
12 *and county shall adopt an ordinance, consistent with the goals*
13 *and intent of subdivision (a), that creates an expedited, streamlined*
14 *permitting process for small residential rooftop solar energy*
15 *systems. In developing an expedited permitting process, the city,*
16 *county, or city and county shall adopt a checklist of all*
17 *requirements with which small rooftop solar energy systems shall*
18 *comply to be eligible for expedited review. If submitted during*
19 *business hours, an application that meet the requirements in the*
20 *checklist shall be reviewed within 24 business hours of application*
21 *submittal. If submitted after business hours, an application that*
22 *meet the requirements in the checklist shall be reviewed within 24*
23 *business hours of the beginning of the next business day after*
24 *submittal of the application. The checklist and required permitting*
25 *documentation shall be published on a publically accessible*
26 *Internet Web site and the city, county, or city and county shall*
27 *allow for electronic submittal of a permit application and*
28 *associated documentation, and shall authorize the electronic*
29 *signature on all forms, applications, and other documentation in*
30 *lieu of a wet signature by an applicant. In developing the*
31 *ordinance, the city, county, or city and county shall strive to*
32 *conform with standardized checklists based on existing statewide*
33 *solar permitting guidelines or best practices including those*
34 *developed through the United States Department of Energy's*
35 *SunShot Initiative.*

36 (h) *For a small residential rooftop solar energy system eligible*
37 *for expedited review, only one inspection shall be required and*
38 *that one inspection shall be scheduled within two business days*
39 *of a request, if the request is received during business hours. If*
40 *the request is received after business hours, the inspection shall*

1 *be scheduled within two business days of the beginning of the next*
2 *business day after receipt of the request. If a city, county, or city*
3 *and county is unable to provide inspection within two business*
4 *days of a request, the city, county, or city and county may authorize*
5 *a third-party inspection, using a qualified or certified inspector.*
6 *If the small residential rooftop solar energy system fails inspection,*
7 *a subsequent inspection shall also conform to the requirements of*
8 *this subdivision.*

9 (i) *A city, county, or city and county shall not condition approval*
10 *for any solar energy system permit on the approval of a solar*
11 *energy system by an association, as that term is defined in Section*
12 *4080 of the Civil Code.*

13 ~~(g)~~

14 (j) *The following definitions apply to this section:*

15 (1) *“A feasible method to satisfactorily mitigate or avoid the*
16 *specific, adverse impact” includes, but is not limited to, any*
17 *cost-effective method, condition, or mitigation imposed by a city*
18 ~~*or city, county, or city and county*~~ *on another similarly situated*
19 *application in a prior successful application for a permit. A city*
20 ~~*or city, county, or city and county*~~ *shall use its best efforts to ensure*
21 *that the selected method, condition, or mitigation meets the*
22 *conditions of subparagraphs (A) and (B) of paragraph (1) of*
23 *subdivision (d) of Section 714 of the Civil Code.*

24 (2) *“Accredited listing agency” means a standards or testing*
25 *organization that evaluates solar energy systems according to*
26 *specified, independent criteria and allows its mark to be used on*
27 *qualifying systems as a stamp of approval, such as the American*
28 *National Standards Institute or the American Association for*
29 *Laboratory Accreditation.*

30 (3) *“Electronic submittal” means the utilization any of the*
31 *following:*

32 (A) *Email.*

33 (B) *The Internet.*

34 (C) *Facsimile.*

35 (4) *“Small residential solar energy system” means all of the*
36 *following:*

37 (A) *A solar energy system that is no larger than 10 kilowatts*
38 *alternating current nameplate rating or 30 kilowatts thermal.*

39 (B) *A solar energy system that conforms to all applicable state*
40 *fire, structural, electrical, and other building codes as adopted or*

1 amended by the city, county, or city and county and paragraph (3)
2 of subdivision (c) of Section 714 of the Civil Code. If a conflict
3 arises between the requirements in this section and any
4 requirements in state fire, electrical, structural, or building codes,
5 the requirements in this section shall apply.

6 (C) A solar energy system that is installed on a single or duplex
7 family dwelling.

8 (D) A solar panel or module array that does not exceed the
9 maximum legal building height.

10 (2)

11 (5) “Solar energy system” has the same meaning set forth in
12 paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the
13 Civil Code.

14 (3)

15 (6) A ~~“specific,”~~ “Specific, adverse impact” means a significant,
16 quantifiable, direct, and unavoidable impact, based on objective,
17 identified, and written public health or safety standards, policies,
18 or conditions as they existed on the date the application was
19 deemed complete.

20 SEC. 4. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 a local agency or school district has the authority to levy service
23 charges, fees, or assessments sufficient to pay for the program or
24 level of service mandated by this act, within the meaning of Section
25 17556 of the Government Code.

26 SECTION 1. Section 17959.2 is added to the Health and Safety
27 Code, to read:

28 17959.2. Notwithstanding Section 17959.1, a city or county
29 shall process and approve any permit application for a residential
30 rooftop solar energy system of up to 10kW on the same day it has
31 been submitted.

32 SEC. 2. If the Commission on State Mandates determines that
33 this act contains costs mandated by the state, reimbursement to
34 local agencies and school districts for those costs shall be made
35 pursuant to Part 7 (commencing with Section 17500) of Division
36 4 of Title 2 of the Government Code.

O