

AMENDED IN ASSEMBLY MAY 5, 2014

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 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.

(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~~ *address a statewide concern*. The bill would additionally require a city, county, or city and county to 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~~ *systems* 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~~, *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.

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.

8 (b) Rooftop solar energy is a leading renewable energy
9 technology that will help this state reach its energy and
10 environmental goals.

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

14 (d) Various studies, including one by the Lawrence Berkeley
15 National Laboratory, show that, despite the 1978 California Solar
16 Rights Act, declaring that the “implementation of consistent
17 statewide standards to achieve the timely and cost-effective
18 installation of solar energy systems is not a municipal affair ... but
19 is instead a matter of statewide concern,” the permitting process

1 governing the installation of rooftop solar energy systems varies
2 widely across jurisdictions and, contrary to the intent of the law,
3 is both an “obstacle” to the state’s clean energy and greenhouse
4 reduction goals and a “burdensome cost” to homeowners,
5 businesses, schools, and public agencies.

6 (e) The United States Department of Energy, through its SunShot
7 Initiative, has distributed millions of dollars in grants to local and
8 state governments, including California jurisdictions, and nonprofit
9 organizations to reduce the costs of distributed solar through
10 streamlined and standardized permitting.

11 (f) A modernized and standardized permitting process for
12 installations of small-scale solar distributed generation technology
13 on residential rooftops will increase the deployment of solar
14 distributed generation, help to expand access to lower income
15 households, provide solar customers greater installation ease,
16 improve the state’s ability to reach its clean energy goals, and
17 generate much needed jobs in the state, all while maintaining safety
18 standards.

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

20 714. (a) Any covenant, restriction, or condition contained in
21 any deed, contract, security instrument, or other instrument
22 affecting the transfer or sale of, or any interest in, real property,
23 and any provision of a governing document, as defined in Section
24 4150 or 6552, that effectively prohibits or restricts the installation
25 or use of a solar energy system is void and unenforceable.

26 (b) This section does not apply to provisions that impose
27 reasonable restrictions on solar energy systems. However, it is the
28 policy of the state to promote and encourage the use of solar energy
29 systems and to remove obstacles thereto. Accordingly, reasonable
30 restrictions on a solar energy system are those restrictions that do
31 not significantly increase the cost of the system or significantly
32 decrease its efficiency or specified performance, or that allow for
33 an alternative system of comparable cost, efficiency, and energy
34 conservation benefits.

35 (c) (1) A solar energy system shall meet applicable health and
36 safety standards and requirements imposed by state and local
37 permitting authorities, consistent with Section 65850.5 of the
38 Government Code.

1 (2) Every solar energy system for heating water shall be certified
2 by an accredited listing agency as defined in Section 65850.5 of
3 the Government Code.

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

10 (d) For the purposes of this section:

11 (1) (A) For solar domestic water heating systems or solar
12 swimming pool heating systems that comply with state and federal
13 law, “significantly” means an amount exceeding 10 percent of the
14 cost of the system, but in no case more than one thousand dollars
15 (\$1,000), or decreasing the efficiency of the solar energy system
16 by an amount exceeding 10 percent, as originally specified and
17 proposed.

18 (B) For photovoltaic systems that comply with state and federal
19 law, “significantly” means an amount not to exceed one thousand
20 dollars (\$1,000) over the system cost as originally specified and
21 proposed, or a decrease in system efficiency of an amount
22 exceeding 10 percent as originally specified and proposed.

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

25 (e) (1) Whenever approval is required for the installation or
26 use of a solar energy system, the application for approval shall be
27 processed and approved by the appropriate approving entity in the
28 same manner as an application for approval of an architectural
29 modification to the property, and shall not be willfully avoided or
30 delayed.

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

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

35 (B) If an application is not denied in writing within 30 days
36 from the date of receipt of the application, the application shall be
37 deemed approved, unless that delay is the result of a reasonable
38 request for additional information.

39 (f) Any entity, other than a public entity, that willfully violates
40 this section shall be liable to the applicant or other party for actual

1 damages occasioned thereby, and shall pay a civil penalty to the
2 applicant or other party in an amount not to exceed one thousand
3 dollars (\$1,000).

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

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

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

13 SEC. 3. Section 65850.5 of the Government Code is amended
14 to read:

15 65850.5. (a) The implementation of consistent statewide
16 standards to achieve the timely and cost-effective installation of
17 solar energy systems is not a municipal affair, as that term is used
18 in Section 5 of Article XI of the California Constitution, but is
19 instead a matter of statewide concern, therefore, this section shall
20 apply to every city in this state, including charter cities *concern*.

21 It is the intent of the Legislature that local agencies not adopt
22 ordinances that create unreasonable barriers to the installation of
23 solar energy systems, including, but not limited to, design review
24 for aesthetic purposes, and not unreasonably restrict the ability of
25 homeowners and agricultural and business concerns to install solar
26 energy systems. It is the policy of the state to promote and
27 encourage the use of solar energy systems and to limit obstacles
28 to their use. It is the intent of the Legislature that local agencies
29 comply not only with the language of this section, but also the
30 legislative intent to encourage the installation of solar energy
31 systems by removing obstacles to, and minimizing costs of,
32 permitting for such systems.

33 (b) A city or county shall administratively approve applications
34 to install solar energy systems through the issuance of a building
35 permit or similar nondiscretionary permit. Review of the
36 application to install a solar energy system shall be limited to the
37 building official's review of whether it meets all health and safety
38 requirements of local, state, and federal law. The requirements of
39 local law shall be limited to those standards and regulations
40 necessary to ensure that the solar energy system will not have a

1 specific, adverse impact upon the public health or safety. However,
2 if the building official of the city or county makes a finding, based
3 on substantial evidence, that the solar energy system could have
4 a specific, adverse impact upon the public health and safety, the
5 city or county may require the applicant to apply for a use permit.

6 (c) A city, county, or city and county may not deny an
7 application for a use permit to install a solar energy system unless
8 it makes written findings based upon substantial evidence in the
9 record that the proposed installation would have a specific, adverse
10 impact upon the public health or safety, and there is no feasible
11 method to satisfactorily mitigate or avoid the specific, adverse
12 impact. The findings shall include the basis for the rejection of
13 potential feasible alternatives of preventing the adverse impact.

14 (d) The decision of the building official pursuant to subdivisions
15 (b) and (c) may be appealed to the planning commission of the
16 city, county, or city and county.

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

20 (f) (1) A solar energy system shall meet applicable health and
21 safety standards and requirements imposed by state and local
22 permitting authorities.

23 (2) Every solar energy system for heating water shall be certified
24 by an accredited listing agency.

25 (3) A solar energy system for producing electricity shall meet
26 all applicable safety and performance standards established by the
27 National Electrical Code, the Institute of Electrical and Electronics
28 Engineers, and accredited testing laboratories such as Underwriters
29 Laboratories and, where applicable, rules of the Public Utilities
30 Commission regarding safety and reliability.

31 (g) On or before September 30, 2015, every city, county, or city
32 and county shall adopt an ordinance, consistent with the goals and
33 intent of subdivision (a), that creates an expedited, streamlined
34 permitting process for small residential rooftop solar energy
35 systems. In developing an expedited permitting process, the city,
36 county, or city and county shall adopt a checklist of all
37 requirements with which small rooftop solar energy systems shall
38 comply to be eligible for expedited review. If submitted during
39 business hours, an application that meet the requirements in the
40 checklist shall be reviewed within 24 business hours of application

1 submittal. If submitted after business hours, an application that
2 meet the requirements in the checklist shall be reviewed within 24
3 business hours of the beginning of the next business day after
4 submittal of the application. The checklist and required permitting
5 documentation shall be published on a publically accessible Internet
6 Web site and the city, county, or city and county shall allow for
7 electronic submittal of a permit application and associated
8 documentation, and shall authorize the electronic signature on all
9 forms, applications, and other documentation in lieu of a wet
10 signature by an applicant. In developing the ordinance, the city,
11 county, or city and county shall strive to conform with standardized
12 checklists based on existing statewide solar permitting guidelines
13 or best practices including those developed through the United
14 States Department of Energy’s SunShot Initiative.

15 (h) For a small residential rooftop solar energy system eligible
16 for expedited review, only one inspection shall be required and
17 that one inspection shall be scheduled within two business days
18 of a request, if the request is received during business hours. If the
19 request is received after business hours, the inspection shall be
20 scheduled within two business days of the beginning of the next
21 business day after receipt of the request. If a city, county, or city
22 and county is unable to provide inspection within two business
23 days of a request, the city, county, or city and county may authorize
24 a third-party inspection, using a qualified or certified inspector. If
25 the small residential rooftop solar energy system fails inspection,
26 a subsequent inspection shall also conform to the requirements of
27 this subdivision.

28 (i) A city, county, or city and county shall not condition approval
29 for any solar energy system permit on the approval of a solar
30 energy system by an association, as that term is defined in Section
31 4080 of the Civil Code.

32 (j) The following definitions apply to this section:

33 (1) “A feasible method to satisfactorily mitigate or avoid the
34 specific, adverse impact” includes, but is not limited to, any
35 cost-effective method, condition, or mitigation imposed by a city,
36 county, or city and county on another similarly situated application
37 in a prior successful application for a permit. A city, county, or
38 city and county shall use its best efforts to ensure that the selected
39 method, condition, or mitigation meets the conditions of

1 subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of
2 Section 714 of the Civil Code.

3 (2) “Accredited listing agency” means a standards or testing
4 organization that evaluates solar energy systems according to
5 specified, independent criteria and allows its mark to be used on
6 qualifying systems as a stamp of approval, such as the American
7 National Standards Institute or the American Association for
8 Laboratory Accreditation.

9 (3) “Electronic submittal” means the utilization any of the
10 following:

- 11 (A) Email.
- 12 (B) The Internet.
- 13 (C) Facsimile.

14 (4) “Small residential solar energy system” means all of the
15 following:

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

18 (B) A solar energy system that conforms to all applicable state
19 fire, structural, electrical, and other building codes as adopted or
20 amended by the city, county, or city and county and paragraph (3)
21 of subdivision (c) of Section 714 of the Civil Code. ~~If a conflict~~
22 ~~arises between the requirements in this section and any~~
23 ~~requirements in state fire, electrical, structural, or building codes,~~
24 ~~the requirements in this section shall apply.~~

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

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

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

32 (6) “Specific, adverse impact” means a significant, quantifiable,
33 direct, and unavoidable impact, based on objective, identified, and
34 written public health or safety standards, policies, or conditions
35 as they existed on the date the application was deemed complete.

36 SEC. 4. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 a local agency or school district has the authority to levy service
39 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O