

AMENDED IN SENATE JULY 1, 2014  
AMENDED IN SENATE JUNE 18, 2014  
AMENDED IN ASSEMBLY MAY 8, 2014  
AMENDED IN ASSEMBLY MAY 5, 2014  
AMENDED IN ASSEMBLY APRIL 21, 2014  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2188**

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**Introduced by Assembly Member Muratsuchi**

February 20, 2014

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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 address a statewide concern. The bill would additionally require a city, county, or city and county to adopt, on or before September 30, 2015, in consultation with specified public entities 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 5 business days of any request, as specified, and to perform only one inspection, except in a timely manner,~~ 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.

Because the bill would impose new duties upon local governments and local agencies, it would impose a state-mandated local program.

(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 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 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 45 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.

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

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

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

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

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

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

35 (b) This section does not apply to provisions that impose  
36 reasonable restrictions on solar energy systems. However, it is the  
37 policy of the state to promote and encourage the use of solar energy  
38 systems and to remove obstacles thereto. Accordingly, reasonable  
39 restrictions on a solar energy system are those restrictions that do  
40 not significantly increase the cost of the system or significantly

1 decrease its efficiency or specified performance, or that allow for  
2 an alternative system of comparable cost, efficiency, and energy  
3 conservation benefits.

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

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

11 (3) A solar energy system for producing electricity shall also  
12 meet all applicable safety and performance standards established  
13 by the National Electrical Code, the Institute of Electrical and  
14 Electronics Engineers, and accredited testing laboratories such as  
15 Underwriters Laboratories and, where applicable, rules of the  
16 Public Utilities Commission regarding safety and reliability.

17 (d) For the purposes of this section:

18 (1) (A) For solar domestic water heating systems or solar  
19 swimming pool heating systems that comply with state and federal  
20 law, “significantly” means an amount exceeding 10 percent of the  
21 cost of the system, but in no case more than one thousand dollars  
22 (\$1,000), or decreasing the efficiency of the solar energy system  
23 by an amount exceeding 10 percent, as originally specified and  
24 proposed.

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

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

32 (e) (1) Whenever approval is required for the installation or  
33 use of a solar energy system, the application for approval shall be  
34 processed and approved by the appropriate approving entity in the  
35 same manner as an application for approval of an architectural  
36 modification to the property, and shall not be willfully avoided or  
37 delayed.

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

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

2 (B) If an application is not denied in writing within 45 days  
3 from the date of receipt of the application, the application shall be  
4 deemed approved, unless that delay is the result of a reasonable  
5 request for additional information.

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

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

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

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

20 SEC. 3. Section 65850.5 of the Government Code is amended  
21 to read:

22 65850.5. (a) The implementation of consistent statewide  
23 standards to achieve the timely and cost-effective installation of  
24 solar energy systems is not a municipal affair, as that term is used  
25 in Section 5 of Article XI of the California Constitution, but is  
26 instead a matter of statewide concern. It is the intent of the  
27 Legislature that local agencies not adopt ordinances that create  
28 unreasonable barriers to the installation of solar energy systems,  
29 including, but not limited to, design review for aesthetic purposes,  
30 and not unreasonably restrict the ability of homeowners and  
31 agricultural and business concerns to install solar energy systems.  
32 It is the policy of the state to promote and encourage the use of  
33 solar energy systems and to limit obstacles to their use. It is the  
34 intent of the Legislature that local agencies comply not only with  
35 the language of this section, but also the legislative intent to  
36 encourage the installation of solar energy systems by removing  
37 obstacles to, and minimizing costs of, permitting for such systems.

38 (b) A city or county shall administratively approve applications  
39 to install solar energy systems through the issuance of a building  
40 permit or similar nondiscretionary permit. Review of the

1 application to install a solar energy system shall be limited to the  
2 building official's review of whether it meets all health and safety  
3 requirements of local, state, and federal law. The requirements of  
4 local law shall be limited to those standards and regulations  
5 necessary to ensure that the solar energy system will not have a  
6 specific, adverse impact upon the public health or safety. However,  
7 if the building official of the city or county makes a finding, based  
8 on substantial evidence, that the solar energy system could have  
9 a specific, adverse impact upon the public health and safety, the  
10 city or county may require the applicant to apply for a use permit.

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

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

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

25 (f) (1) A solar energy system shall meet applicable health and  
26 safety standards and requirements imposed by state and local  
27 permitting authorities.

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

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

36 (g) (1) On or before September 30, 2015, every city, county,  
37 or city and county, in consultation with the local fire department  
38 or district and the utility director, if the city, county, or city and  
39 county operates a utility, shall adopt an ordinance, consistent with  
40 the goals and intent of subdivision (a), that creates an expedited,

1 streamlined permitting process for small residential rooftop solar  
2 energy systems. In developing an expedited permitting process,  
3 the city, county, or city and county shall adopt a checklist of all  
4 requirements with which small rooftop solar energy systems shall  
5 comply to be eligible for expedited review. An application that  
6 satisfies the information requirements in the checklist, as  
7 determined by the city, county, and city and county, shall be  
8 deemed complete. Upon confirmation by the city, county, or city  
9 and county of the application and supporting documents being  
10 complete and meeting the requirements of the checklist, *and*  
11 *consistent with the ordinance*, a city, county, or city and county  
12 shall, consistent with subdivision (b), approve the application and  
13 issue all required permits or authorizations. Upon receipt of an  
14 incomplete application, a city, county, or city and county shall  
15 issue a written correction notice detailing all deficiencies in the  
16 application and any additional information required to be eligible  
17 for expedited permit issuance. ~~The~~

18 (2) *The* checklist and required permitting documentation shall  
19 be published on a publically accessible Internet Web site, if the  
20 city, county, or city and county has an Internet Web site, and the  
21 city, county, or city and county shall allow for electronic submittal  
22 of a permit application and associated documentation, and shall  
23 authorize the electronic signature on all forms, applications, and  
24 other documentation in lieu of a wet signature by an applicant. In  
25 developing the ordinance, the city, county, or city and county shall  
26 strive to conform with standardized checklists based on existing  
27 statewide solar permitting guidelines or best practices including  
28 those developed through the United States Department of Energy's  
29 SunShot Initiative. *If a city, county, or city and county determines*  
30 *that it is unable to authorize the acceptance of an electronic*  
31 *signature on all forms, applications, and other documents in lieu*  
32 *of a wet signature by an applicant, the city, county, or city and*  
33 *county shall state, in the ordinance required under this subdivision,*  
34 *the reasons for its inability to accept electronic signatures and*  
35 *acceptance of an electronic signature shall not be required.*

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 five business days~~  
39 ~~of a request, if the request is received during business hours. If the~~  
40 ~~request is received after business hours, the inspection shall be~~

1 ~~scheduled within five 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 determines that it is unable to provide an inspection~~  
4 ~~within five business days of a request, the city, county, or city and~~  
5 ~~county may hold a public hearing and adopt an ordinance or~~  
6 ~~resolution providing for a different time period or different means~~  
7 ~~for scheduling inspections required, which shall be done in a timely~~  
8 ~~manner and may include a consolidated inspection, except that a~~  
9 ~~separate fire safety inspection may be performed in a city, county,~~  
10 ~~or city and county that does not have an agreement with a local~~  
11 ~~fire authority to conduct a fire safety inspection on behalf of the~~  
12 ~~fire authority. If a small residential rooftop solar energy system~~  
13 ~~fails inspection, a subsequent inspection is authorized, however~~  
14 ~~the subsequent inspection need not conform to the requirements~~  
15 ~~of this subdivision.~~

16 (i) A city, county, or city and county shall not condition approval  
17 for any solar energy system permit on the approval of a solar  
18 energy system by an association, as that term is defined in Section  
19 4080 of the Civil Code.

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

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

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

36 (3) “Electronic submittal” means the utilization of one or more  
37 of the following:

- 38 (A) Email.
- 39 (B) The Internet.
- 40 (C) Facsimile.

- 1 (4) “Small residential solar energy system” means all of the  
2 following:
- 3 (A) A solar energy system that is no larger than 10 kilowatts  
4 alternating current nameplate rating or 30 kilowatts thermal.
- 5 (B) A solar energy system that conforms to all applicable state  
6 fire, structural, electrical, and other building codes as adopted or  
7 amended by the city, county, or city and county and paragraph (3)  
8 of subdivision (c) of Section 714 of the Civil Code.
- 9 (C) A solar energy system that is installed on a single or duplex  
10 family dwelling.
- 11 (D) A solar panel or module array that does not exceed the  
12 maximum legal building height.
- 13 (5) “Solar energy system” has the same meaning set forth in  
14 paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the  
15 Civil Code.
- 16 (6) “Specific, adverse impact” means a significant, quantifiable,  
17 direct, and unavoidable impact, based on objective, identified, and  
18 written public health or safety standards, policies, or conditions  
19 as they existed on the date the application was 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.