

AMENDED IN SENATE AUGUST 14, 2014

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

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**ASSEMBLY BILL**

**No. 2188**

**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 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 *in single family residences and solar collectors for heating water in commercial or swimming pool applications* 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 *in single family residences and solar collectors for heating water in commercial or swimming pool applications* 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.

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 safety  
30 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) Every solar energy system for heating water~~ *Solar energy*  
12 *systems used for heating water in single family residences and*  
13 *solar collectors used for heating water in commercial or swimming*  
14 *pool applications* shall be certified by an accredited listing agency  
15 as defined in ~~Section 65850.5 of the Government Code.~~ *the*  
16 *Plumbing and Mechanical Codes.*

17 (3) A solar energy system for producing electricity shall also  
18 meet all applicable safety and performance standards established  
19 by the ~~National~~ *California* Electrical Code, the Institute of  
20 Electrical and Electronics Engineers, and accredited testing  
21 laboratories such as Underwriters Laboratories and, where  
22 applicable, rules of the Public Utilities Commission regarding  
23 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 10 percent of the  
28 cost of the system, but in no case more than one thousand dollars  
29 (\$1,000), or decreasing the efficiency of the solar energy system  
30 by an amount exceeding 10 percent, as originally specified and  
31 proposed.

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

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

39 (e) (1) Whenever approval is required for the installation or  
40 use of a solar energy system, the application for approval shall be

1 processed and approved by the appropriate approving entity in the  
2 same manner as an application for approval of an architectural  
3 modification to the property, and shall not be willfully avoided or  
4 delayed.

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

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

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

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

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

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

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

27 SEC. 3. Section 65850.5 of the Government Code is amended  
28 to read:

29 65850.5. (a) The implementation of consistent statewide  
30 standards to achieve the timely and cost-effective installation of  
31 solar energy systems is not a municipal affair, as that term is used  
32 in Section 5 of Article XI of the California Constitution, but is  
33 instead a matter of statewide concern. It is the intent of the  
34 Legislature that local agencies not adopt ordinances that create  
35 unreasonable barriers to the installation of solar energy systems,  
36 including, but not limited to, design review for aesthetic purposes,  
37 and not unreasonably restrict the ability of homeowners and  
38 agricultural and business concerns to install solar energy systems.  
39 It is the policy of the state to promote and encourage the use of  
40 solar energy systems and to limit obstacles to their use. It is the

1 intent of the Legislature that local agencies comply not only with  
2 the language of this section, but also the legislative intent to  
3 encourage the installation of solar energy systems by removing  
4 obstacles to, and minimizing costs of, permitting for such systems.

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

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

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

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

32 (f) (1) A solar energy system shall meet applicable health and  
33 safety standards and requirements imposed by state and local  
34 permitting authorities.

35 (2) ~~Every solar energy system~~ *Solar energy systems* for heating  
36 *water in single family residences and solar collectors used for*  
37 *heating water in commercial or swimming pool applications* shall  
38 be certified by an accredited listing ~~agency~~ *agency as defined in*  
39 *the California Plumbing and Mechanical Codes.*

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

7 (g) (1) On or before September 30, 2015, every city, county,  
 8 or city and county, in consultation with the local fire department  
 9 or district and the utility director, if the city, county, or city and  
 10 county operates a utility, shall adopt an ordinance, consistent with  
 11 the goals and intent of subdivision (a), that creates an expedited,  
 12 streamlined permitting process for small residential rooftop solar  
 13 energy systems. In developing an expedited permitting process,  
 14 the city, county, or city and county shall adopt a checklist of all  
 15 requirements with which small rooftop solar energy systems shall  
 16 comply to be eligible for expedited review. An application that  
 17 satisfies the information requirements in the checklist, as  
 18 determined by the city, county, and city and county, shall be  
 19 deemed complete. Upon confirmation by the city, county, or city  
 20 and county of the application and supporting documents being  
 21 complete and meeting the requirements of the checklist, and  
 22 consistent with the ordinance, a city, county, or city and county  
 23 shall, consistent with subdivision (b), approve the application and  
 24 issue all required permits or authorizations. Upon receipt of an  
 25 incomplete application, a city, county, or city and county shall  
 26 issue a written correction notice detailing all deficiencies in the  
 27 application and any additional information required to be eligible  
 28 for expedited permit issuance.

29 (2) The checklist and required permitting documentation shall  
 30 be published on a publically accessible Internet Web site, if the  
 31 city, county, or city and county has an Internet Web site, and the  
 32 city, county, or city and county shall allow for electronic submittal  
 33 of a permit application and associated documentation, and shall  
 34 authorize the electronic signature on all forms, applications, and  
 35 other documentation in lieu of a wet signature by an applicant. In  
 36 developing the ordinance, the city, county, or city and county shall  
 37 ~~strive to conform with standardized checklists based on existing~~  
 38 ~~statewide solar permitting guidelines or best practices including~~  
 39 ~~those developed through the United States Department of Energy's~~  
 40 ~~SunShot Initiative.~~ *substantially conform its expedited, streamlined*

1 *permitting process with the recommendations for expedited*  
2 *permitting, including the checklists and standard plans contained*  
3 *in the most current version of the California Solar Permitting*  
4 *Guidebook and adopted by the Governor’s Office of Planning and*  
5 *Research. A city, county, or city and county may adopt an*  
6 *ordinance that modifies the checklists and standards found in the*  
7 *guidebook due to unique climactic, geological, seismological, or*  
8 *topographical conditions. If a city, county, or city and county*  
9 *determines that it is unable to authorize the acceptance of an*  
10 *electronic signature on all forms, applications, and other documents*  
11 *in lieu of a wet signature by an applicant, the city, county, or city*  
12 *and county shall state, in the ordinance required under this*  
13 *subdivision, the reasons for its inability to accept electronic*  
14 *signatures and acceptance of an electronic signature shall not be*  
15 *required.*

16 (h) For a small residential rooftop solar energy system eligible  
17 for expedited review, only one inspection shall be required, which  
18 shall be done in a timely manner and may include a consolidated  
19 inspection, except that a separate fire safety inspection may be  
20 performed in a city, county, or city and county that does not have  
21 an agreement with a local fire authority to conduct a fire safety  
22 inspection on behalf of the fire authority. If a small residential  
23 rooftop solar energy system fails inspection, a subsequent  
24 inspection is authorized, however the subsequent inspection need  
25 not conform to the requirements of this subdivision.

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

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

31 (1) “A feasible method to satisfactorily mitigate or avoid the  
32 specific, adverse impact” includes, but is not limited to, any  
33 cost-effective method, condition, or mitigation imposed by a city,  
34 county, or city and county on another similarly situated application  
35 in a prior successful application for a permit. A city, county, or  
36 city and county shall use its best efforts to ensure that the selected  
37 method, condition, or mitigation meets the conditions of  
38 subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of  
39 Section 714 of the Civil Code.

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

7     ~~(3)~~

8     (2) “Electronic submittal” means the utilization of one or more  
9 of the following:

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

13    ~~(4)~~

14    (3) “Small residential *rooftop* solar energy system” means all  
15 of the 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.

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

24    (D) A solar panel or module array that does not exceed the  
25 maximum legal building height *as defined by the authority having*  
26 *jurisdiction.*

27    ~~(5)~~

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

31    ~~(6)~~

32    (5) “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