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HOUSE BILL NO. 2438

Offered January 13, 2025

Prefiled January 8, 2025

A BILL to amend and reenact §§ 15.2-2288.7 and 15.2-2288.8 of the Code of Virginia, relating to local regulation of solar facilities; special exceptions.

Patrons—Mundon King, Sullivan, Clark, Cole, Martinez and Willett

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2288.7 and 15.2-2288.8 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2288.7. Local regulation of solar facilities.

A. An owner of a residential dwelling unit may install a solar facility on the roof of such dwelling to serve the electricity or thermal needs of that dwelling, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located on property zoned residential shall be permitted, provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as provided herein, any other solar facility proposed on property zoned residential, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality.

B. An owner of real property zoned agricultural may install a solar facility on the roof of a residential dwelling on such property, or on the roof of another building or structure on such property, to serve the electricity or thermal needs of that property upon which such facilities are located, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located on property zoned agricultural and to be operated under § 56-594 or 56-594.2 shall be permitted, provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as otherwise provided herein, any other solar facility proposed on property zoned agricultural, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality.

C. An owner of real property zoned commercial, industrial, or institutional may install a solar facility on the roof of one or more buildings located on such property to serve the electricity or thermal needs of that property upon which such facilities are located, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. ~~Unless a local ordinance provides otherwise, a~~ A ground-mounted solar energy generation facility to be located on property zoned *agricultural*, commercial, industrial, or institutional shall be permitted; ~~provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as otherwise provided herein, any other solar facility proposed on property zoned commercial, industrial, or institutional, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality pursuant to § 15.2-2288.8.~~

D. An owner of real property zoned mixed-use may install a solar facility on the roof of one or more buildings located on such property to serve the electricity or thermal needs of that property upon which such facilities are located, provided that such installation is (i) in compliance with any height and setback

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59 requirements in the zoning district where such property is located and (ii) in compliance with any provisions
 60 pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to §
 61 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted
 62 solar energy generation facility to be located on property zoned mixed-use shall be permitted, provided that
 63 such installation is (a) in compliance with any height and setback requirements in the zoning district where
 64 such property is located and (b) in compliance with any provisions pertaining to any local historic,
 65 architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property
 66 is located. Except as provided herein, any other solar facility proposed on property zoned mixed-use,
 67 including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property
 68 other than the property where such facilities are located, shall be subject to any applicable zoning regulations
 69 of the locality.

70 E. Nothing in this section shall be construed to supersede or limit contracts or agreements between or
 71 among individuals or private entities related to the use of real property, including recorded declarations and
 72 covenants, the provisions of condominium instruments of a condominium created pursuant to the Virginia
 73 Condominium Act (§ 55.1-1900 et seq.), the declaration of a common interest community as defined in §
 74 54.1-2345, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate
 75 Cooperative Act (§ 55.1-2100 et seq.), or any declaration of a property owners' association created pursuant
 76 to the Property Owners' Association Act (§ 55.1-1800 et seq.).

77 F. A locality, by ordinance, may provide by-right authority for installation of solar facilities in any zoning
 78 classification in addition to that provided in this section. A locality may also, by ordinance, require a property
 79 owner or an applicant for a permit pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) who
 80 removes solar panels to dispose of such panels in accordance with such ordinance in addition to other
 81 applicable laws and regulations affecting such disposal.

82 **§ 15.2-2288.8. Special exceptions for solar photovoltaic projects.**

83 A. Any locality ~~may grant~~ shall require a special exception pursuant to § 15.2-2286 and subsection C of §
 84 15.2-2288.7, and shall include in its zoning ordinance reasonable regulations and provisions consistent with
 85 this section for a special exception as defined in § 15.2-2201, for any solar photovoltaic (electric energy)
 86 project or energy storage project. For the purposes of this section, "energy storage project" means energy
 87 storage equipment and technology within an energy storage project that is capable of absorbing energy,
 88 storing such energy for a period of time, and redelivering such energy after it has been stored.

89 Any special exception granted pursuant to this section shall comply with the following criteria. Where
 90 numerical ranges are attached to criteria, localities may choose to establish an ordinance that specifies any
 91 number within the applicable range that they deem appropriate for their community. Nothing in this section
 92 shall be construed to relieve project developers of the responsibility to comply with all relevant state and
 93 federal permits and regulations.

94 1. Setback distances shall be measured from the nearest edge of the solar equipment as follows: (i)
 95 between 150 and 300 feet from the nearest point on the outer wall of existing occupied community buildings
 96 and dwellings on non-participating properties, (ii) at least 125 feet from the center line of any state-
 97 maintained road abutting the property, and (iii) between 75 and 150 feet measured from the nearest shared
 98 property line for nonparticipating properties. Setbacks shall not be required for internal boundaries between
 99 adjacent participating parcels.

100 2. Fencing for the solar energy facility must comply with § 55.1-2804 as well as the latest version of the
 101 National Electrical Safety Code or any applicable successor standard. Visual screening requirements shall
 102 not be required to exceed six feet at planting and shall allow for consideration of pre-existing natural or
 103 manmade visual barriers.

104 3. The height of solar panels shall not exceed a maximum height of 25 feet above ground when the arrays
 105 are at full tilt, except in cases where a height variance is necessary to allow for agrivoltaics activity below or
 106 in proximity to the panels. For purposes of this section, "agrivoltaics" means the practice of using the same
 107 land for both agriculture and solar energy production.

108 4. Visual impacts of solar facilities on preservation areas, such as rural legacy areas, agricultural
 109 preservation areas, public parks, scenic rivers and byways, designated heritage areas, and historic structures
 110 or sites listed on or eligible for the National Register of Historic Places or a County Register of Historic
 111 Places, shall be minimized. A locality may request a viewshed analysis as part of the county application to
 112 assure that visual impacts are minimized to the extent practicable through solar panel placement, height,
 113 landscaping, and screening.

114 5. The solar energy facility shall implement light intensity dimming solution technology that provides a
 115 means of tailoring the intensity level of lights according to surrounding visibility.

116 6. The solar energy facility shall comply with all Department of Environmental Quality stormwater
 117 regulations as established in 9VAC25-880.

118 7. The solar energy facility shall minimize new impervious surface on the site and under its solar panels
 119 to the extent practicable.

120 8. Grading shall be minimized to the maximum extent practicable to preserve agricultural soil and

121 prevent soil erosion. Topsoil shall not be removed from the project site. Any stockpiling of topsoil during
 122 construction for the purpose of grading or other site improvements shall only be allowed up to one month
 123 unless the landowner prefers otherwise. The facility shall adhere to Department of Environmental Quality
 124 regulations, requiring temporary site stabilization to be completed within seven days and permanent
 125 stabilization within 14 days. The solar facility shall avoid unnecessarily compacting soil to the extent
 126 possible. If soil is compacted beyond 300 pounds per square inch (PSI), an ordinance may require soil
 127 decompaction after construction has concluded.

128 9. When all land-disturbing activities at the construction site have been completed, the facility shall
 129 initiate permanent stabilization to provide uniform vegetative ground cover that provides a minimum level of
 130 coverage over the project site. An ordinance may require up to 75 percent vegetative cover with no
 131 significant bare areas that is mature enough to survive and will inhibit erosion. The use of native and
 132 naturalized plants shall be encouraged and invasive plants shall be prohibited. For projects or portions of
 133 projects not used for agrivoltaics, native and naturalized pollinator plant species or native and naturalized
 134 meadow species shall be planted, except for in the area directly beneath panels, and maintained throughout
 135 the solar project's life. The seed mix shall include a diversity of species with varied bloom times. Mowing
 136 shall be limited and performed on a schedule that promotes the establishment of the native plantings, controls
 137 invasive species, and avoids impacts to wildlife. All trees and shrubs at the time of planting must
 138 accommodate adequate screening or buffering by the end of three years of planting. Vegetation used to
 139 establish a visual screen shall not be trimmed to stunt upward and outward growth or to otherwise limit the
 140 effectiveness of the visual screen.

141 10. The solar energy facility shall implement wildlife corridors, where corridors are needed, by limiting
 142 fencing to the areas in reasonable proximity to arrays and interconnection equipment to the extent
 143 practicable and consistent with safety and security requirements. The facility shall prioritize open wildlife
 144 access to riparian areas, wetlands, streams, and other areas not in proximity to panels.

145 11. The solar energy facility shall comply with all applicable state and federal labor and employment
 146 laws, including apprenticeships and labor standards necessary to achieve any relevant tax credit bonuses
 147 found in 26 U.S.C. §§ 45Y and 48E.

148 12. A locality shall require a solar developer to enter into a written agreement to decommission solar
 149 energy equipment, facilities, or devices upon the following terms and conditions: (i) if the party that enters
 150 into such written agreement with the locality defaults in the obligation to decommission such equipment,
 151 facilities, or devices in the timeframe set out in such agreement, the locality has the right to enter the real
 152 property of the record title owner of such property without further consent of such owner and to engage in
 153 decommissioning and (ii) such owner, lessee, or developer shall provide financial assurance of such
 154 performance to the locality in the form of certified funds, cash escrow, bond, letter of credit, or parent
 155 guarantee, based upon an estimate of a professional engineer licensed in the Commonwealth, who is engaged
 156 by the applicant, with experience in preparing decommissioning estimates, and approved by the locality;
 157 such estimate shall not exceed the total of the projected cost of decommissioning, which shall include the net
 158 salvage value of such equipment, facilities, or devices, plus a reasonable allowance for estimated
 159 administrative costs related to a default of the owner, lessee, or developer, and an annual inflation factor.
 160 The developer shall hire a professional engineer licensed in the Commonwealth to update the
 161 decommissioning plan cost estimate and corresponding approved financial instrument every five years after
 162 the approval of the first decommissioning plan to adjust for inflation and any other necessary changes. The
 163 decommissioning plan shall remove the facility's equipment from the landowner's property and return the
 164 property to a useful condition, similar to the preconstruction condition unless otherwise agreed to by the
 165 landowner. After the decommissioning process is complete, the facility shall comply with all stormwater
 166 provisions in state law. The project shall provide an up-to-date decommissioning plan to the locality any time
 167 there is project ownership outside of the current developer. Notice shall be provided to the local government
 168 within 30 days of the sale or transfer of the lease or property and a new financial guarantee shall be
 169 provided by the new lease holder or property owner.

170 B. The governing body of such locality may grant a condition that includes (i) dedication of real property
 171 of substantial value or (ii) substantial cash payments for or construction of substantial public improvements,
 172 the need for which is not generated solely by the granting of a conditional use permit, so long as such
 173 conditions are reasonably related to the project.

174 C. Once a condition is granted pursuant to subsection B, such condition shall continue in effect until a
 175 subsequent amendment changes the zoning on the property for which the conditions were granted. However,
 176 such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a
 177 new or substantially revised zoning ordinance.