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SENATE BILL NO. 1114

Offered January 8, 2025

Prefiled January 7, 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.

Patron—VanValkenburg

Referred to Committee on Local Government

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 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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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 mixed-use 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 mixed-use, 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.

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

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

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

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

Any special exception granted pursuant to this section shall comply with the following criteria. Where numerical ranges are attached to criteria, localities may choose to establish an ordinance that specifies any number within the applicable range that they deem appropriate for their community. In the issuance of a special exception, a variance from these ordinance criteria may be implemented only with a written agreement of the locality and the project developer. Nothing in this section shall be construed to relieve projects of the responsibility to comply with all relevant state and federal permits and regulations.

1. Setback distances shall be measured from the nearest edge of the solar equipment as follows: (i) between 150 and 300 feet from the nearest point on the outer wall of existing occupied community buildings and dwellings on non-participating properties, (ii) at least 125 feet from the center line of any state-maintained road abutting the property, and (iii) between 15 and 30 feet measured from the nearest shared property line for nonparticipating properties. Setbacks shall not be required for internal boundaries between adjacent participating parcels.

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

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

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

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

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

7. The solar energy facility shall minimize new impervious surface on the site and under its solar panels.

8. Grading shall be minimized to preserve agricultural soil and prevent soil erosion. Topsoil shall not be

removed from the project site and, during temporary stockpiling, should be segregated from subsoil. The facility shall adhere to Department of Environmental Quality regulations and install seed and straw as vegetative cover or other stabilization techniques within seven days following the completion of work on a portion of the site. The solar facility shall avoid unnecessarily compacting soil. If soil is compacted beyond 300 pounds per square inch (PSI), an ordinance may require soil decompaction after construction has concluded.

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

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

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

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

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

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