

HOUSE BILL NO. 711

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns

on _____)

(Patron Prior to Substitute—Delegate Herring)

A BILL to amend and reenact §§ 15.2-2241.2, 15.2-2288.7, and 15.2-2288.8 of the Code of Virginia, relating to local regulation of solar facilities; special exceptions.

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36 **Be it enacted by the General Assembly of Virginia:**

37 **1. That §§ 15.2-2241.2, 15.2-2288.7, and 15.2-2288.8 of the Code of Virginia are amended and reenacted**
38 **as follows:**

39 **§ 15.2-2241.2. Bonding provisions for decommissioning of solar energy equipment, facilities, or**
40 **devices.**

41 A. As used in this section, unless the context requires a different meaning:

42 "Decommission" means the removal and proper disposal of solar energy equipment, facilities, or devices
43 on real property that has been determined by the locality to be subject to § 15.2-2232 and therefore subject to
44 this section. "Decommission" includes the reasonable restoration of the real property upon which such solar
45 equipment, facilities, or devices are located, including (i) soil stabilization and (ii) revegetation of the ground
46 cover of the real property disturbed by the installation of such equipment, facilities, or devices.

47 "Solar energy equipment, facilities, or devices" means any personal property designed and used primarily
48 for the purpose of collecting, generating, or transferring electric energy from sunlight.

49 B. As part of the local legislative approval process or as a condition of approval of a site plan, a locality
50 shall require an owner, lessee, or developer of real property subject to this section to enter into a written
51 agreement to decommission solar energy equipment, facilities, or devices upon the following terms and
52 conditions: (i) if the party that enters into such written agreement with the locality defaults in the obligation
53 to decommission such equipment, facilities, or devices in the timeframe set out in such agreement, the
54 locality has the right to enter the real property of the record title owner of such property without further
55 consent of such owner and to engage in decommissioning, and (ii) such owner, lessee, or developer provides
56 financial assurance of such performance to the locality in the form of certified funds, cash escrow, bond,
57 letter of credit, or parent guarantee, based upon an estimate of a professional engineer licensed in the
58 Commonwealth, who is engaged by the applicant, with experience in preparing decommissioning estimates
59 and approved by the locality; such estimate shall not exceed the total of the projected cost of

60 decommissioning, which may include the net salvage value of such equipment, facilities, or devices, plus a
61 reasonable allowance for estimated administrative costs related to a default of the owner, lessee, or developer,
62 and an annual inflation factor.

63 *C. The owner, lessee, or operator shall hire a professional engineer licensed in the Commonwealth to*
64 *update the decommissioning plan cost estimate and corresponding approved financial instrument every five*
65 *years after the approval of the first decommissioning plan to adjust for inflation, account for advancements in*
66 *technologies and processes for decommissioning, salvaging, or re-powering of renewable energy facilities,*
67 *and make any other necessary changes. The decommissioning plan shall provide for the removal of the*
68 *facility's equipment from the landowner's property and return of the property to a useful condition similar to*
69 *the preconstruction condition unless otherwise agreed to by the landowner. After the decommissioning*
70 *process is complete, the facility shall comply with all stormwater provisions in state law. The project shall*
71 *provide an up-to-date decommissioning plan to the locality any time there is project ownership outside of the*
72 *current developer. Notice shall be provided to the local government within 30 days of the sale or transfer of*
73 *the lease or property, and a new financial guarantee shall be provided by the new leaseholder or property*
74 *owner.*

75 **§ 15.2-2288.7. Local regulation of solar facilities.**

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

89 B. An owner of real property zoned agricultural may install a solar facility on the roof of a residential
90 dwelling on such property, or on the roof of another building or structure on such property, to serve the

91 electricity or thermal needs of that property upon which such facilities are located, provided that such
92 installation is (i) in compliance with any height and setback requirements in the zoning district where such
93 property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural
94 preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located.
95 Unless a local ordinance provides otherwise, a A ground-mounted solar energy generation facility to be
96 located on property zoned agricultural and to be operated under § 56-594 or 56-594.2 shall be permitted,
97 provided that such installation is (a) in compliance with any height and setback requirements in the zoning
98 district where such property is located and (b) in compliance with any provisions pertaining to any local
99 historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such
100 property is located. Except as otherwise provided herein, any other solar facility proposed on property zoned
101 agricultural, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of
102 any property other than the property where such facilities are located, shall be ~~subject to any applicable~~
103 zoning regulations of the locality considered pursuant to § 15.2-2288.8 unless otherwise permitted by right.

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

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

122 requirements in the zoning district where such property is located and (ii) in compliance with any provisions
123 pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to
124 § 15.2-2306 where such property is located. ~~Unless a local ordinance provides otherwise, a~~ A
125 ground-mounted solar energy generation facility to be located on property zoned mixed-use shall be
126 permitted, provided that such installation is (a) in compliance with any height and setback requirements in the
127 zoning district where such property is located and (b) in compliance with any provisions pertaining to any
128 local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where
129 such property is located. Except as provided herein, any other solar facility proposed on property zoned
130 mixed-use, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of
131 any property other than the property where such facilities are located, shall be subject to any applicable
132 zoning regulations of the locality.

133 E. Nothing in this section shall be construed to supersede or limit contracts or agreements between or
134 among individuals or private entities related to the use of real property, including recorded declarations and
135 covenants, the provisions of condominium instruments of a condominium created pursuant to the Virginia
136 Condominium Act (§ 55.1-1900 et seq.), the declaration of a common interest community as defined in
137 § 54.1-2345, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate
138 Cooperative Act (§ 55.1-2100 et seq.), or any declaration of a property owners' association created pursuant
139 to the Property Owners' Association Act (§ 55.1-1800 et seq.).

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

145 **§ 15.2-2288.8. Special exceptions for solar photovoltaic projects.**

146 A. ~~Any~~ *Unless otherwise provided by right, each locality may grant* shall require a special exception
147 pursuant to §§ 15.2-2204, 15.2-2286, and 15.2-2288.7 or a siting agreement pursuant to § 15.2-2316.7 and
148 include in its zoning ordinance ~~reasonable~~ regulations and provisions *consistent with this section* for a special
149 exception as defined in § 15.2-2201, for any solar photovoltaic ~~(electric energy)~~ project ~~or energy storage~~
150 ~~project.~~ For the purposes of this section, "energy storage project" means energy storage equipment and
151 technology within an energy storage project that is capable of absorbing energy, storing such energy for a
152 period of time, and redelivering such energy after it has been stored "solar photovoltaic project" means a

153 ground-mounted solar facility with a generating capacity of one megawatt or more that is designed to serve,
154 or serves, the electricity or thermal needs of any property other than the property where such facility is
155 located.

156 Any special exception granted pursuant to this section is an amendment to the zoning ordinance pursuant
157 to subdivision A 7 of § 15.2-2286 and shall comply with the following criteria. Where numerical ranges are
158 attached to criteria, localities may choose to establish an ordinance that specifies any number within the
159 applicable range that they deem appropriate for their community. In the issuance of a special exception, a
160 variance from these ordinance criteria may be implemented only with a written agreement of the locality, the
161 property owner or their agent, and the applicant. Nothing in this section shall (i) be construed to relieve
162 projects of the responsibility to comply with all relevant state and federal permits and regulations, including
163 those related to tree canopy; (ii) require a locality to approve a special exception application considered
164 pursuant to this section; (iii) be construed to prohibit a locality from permitting a solar photovoltaic project
165 or energy storage project by right; or (iv) prohibit the owner of a proposed solar photovoltaic project and a
166 locality from entering into a siting agreement that provides less stringent restrictions than those specified
167 under this subsection.

168 1. Setback distances shall be measured from the nearest edge of the equipment as follows: (i) between 150
169 and 200 feet from the nearest point on the outer wall of existing occupied community buildings and dwellings
170 on non-participating properties; (ii) between 50 and 100 feet from the outside edge of the roadbed of any
171 road abutting the property; (iii) for projects not greater than 25 megawatts, 50 feet from the edge, and for
172 projects greater than 25 megawatts, 100 feet from the edge, of tidal wetlands or nontidal wetlands, as defined
173 in 9VAC25-830, or from the top of bank of perennial streams, as defined in § 62.1-44.122; (iv) for projects of
174 any capacity within Chesapeake Bay Preservation Areas, between 100 and 125 feet from the edge of tidal
175 wetlands, nontidal wetlands, or from the top of bank of perennial streams; and (v) between 50 and 75 feet
176 measured from the nearest shared property line for nonparticipating properties. Nothing in this section shall
177 preclude the owner of a nonparticipating property from waiving the foregoing setback requirements by
178 written agreement. Setbacks shall not be required for internal boundaries between adjacent participating
179 parcels. For purposes of clauses (iii) and (iv), "equipment" is limited to solar panels, racking equipment,
180 and inverters.

181 2. Fencing for the facility shall comply with § 55.1-2804, the latest version of the National Electrical
182 Safety Code or any applicable successor standard regarding requirements for limiting access to facilities,
183 and the Uniform Statewide Building Code (§ 36-97 et seq.). Vegetative visual screening requirements shall

184 not be required to exceed three feet at planting, shall be between 25 and 50 feet wide, and shall allow for
185 consideration of preexisting natural or manmade visual barriers.

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

190 4. Visual impacts of facilities on public parks, scenic rivers and byways, and historic structures or sites
191 listed on or eligible for the National Register of Historic Places or a county register of historic places shall
192 be minimized. A locality may request a viewshed analysis as part of the special exception application to
193 assure that visual impacts are minimized through solar panel placement, height, landscaping, and screening.
194 Such analysis shall account for existing vegetation and planned visual buffers. Such screening may be
195 accomplished on any property with the consent of the property owner.

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

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

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

201 8. Land disturbance, including site grading, construction, and landscaping, shall be conducted in
202 compliance with a stormwater pollution prevention plan. Topsoil shall not be removed from the project site.
203 Topsoil shall be returned to disturbed areas from stockpiles as quickly as site conditions allow, unless
204 returning soil would cause adverse impacts to topsoil integrity or is otherwise not practicable for
205 construction activities. Site stabilization shall occur as the site is developed, following appropriate
206 stabilization timelines as identified in the General Permit for Discharges of Stormwater from Construction
207 Activities, and shall not be delayed until site construction is completed. The facility shall decompact soil as
208 necessary and feasible for re-vegetation after construction has concluded.

209 9. When all land-disturbing activities at the construction site have been completed, the facility shall
210 initiate permanent stabilization to provide vegetative ground cover that provides a minimum level of
211 coverage over the project site. An ordinance may require up to 75 percent vegetative cover with no
212 significant bare areas that is mature enough to survive and will inhibit erosion. The use of native and
213 naturalized plants shall be encouraged and invasive plants as established pursuant to § 10.1-104.6:2 shall be
214 prohibited. For projects or portions of projects not used for animal grazing, co-located crop production,

215 native and naturalized pollinator plant species, or native and naturalized meadow species shall be planted,
216 except for in the area directly beneath panels, and maintained throughout the solar project's life. The seed
217 mix shall include a diversity of species with varied bloom times. Mowing shall be limited and performed on a
218 schedule that promotes the establishment of the native plantings, controls invasive species, and minimizes
219 impacts to wildlife. All trees and shrubs at the time of planting shall accommodate adequate screening or
220 buffering at the end of five years of planting. Vegetation used to establish a visual screen shall not be
221 trimmed to stunt upward and outward growth or to otherwise limit the effectiveness of the visual screen.

222 10. The facility shall provide for wildlife passage where needed by limiting fencing to the areas in
223 reasonable proximity to arrays and interconnection equipment to the extent practicable and consistent with
224 safety and security requirements. The facility shall prioritize open wildlife access to riparian areas, wetlands,
225 streams, and other areas not in proximity to panels.

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

229 12. A locality shall require an applicant to enter into a written agreement to decommission equipment,
230 facilities, or devices pursuant to § 15.2-2241.2.

231 B. Any locality may grant a special exception pursuant to § 15.2-2286, and include in its zoning
232 ordinance reasonable regulations and provisions for a special exception as defined in § 15.2-2201, for an
233 energy storage project. For the purposes of this section, "energy storage project" includes energy storage
234 equipment and technology within an energy storage project that is capable of absorbing energy, storing such
235 energy for a period of time, and redelivering such energy after it has been stored.

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

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

244 E. The governing body of such locality shall furnish the State Corporation Commission a record of
245 special exception decisions reached pursuant to this section not more than 60 days after such decision is

246 *made. The record shall include (i) the reason for any adverse decision, (ii) any finding of nonconformity with*
247 *the local comprehensive plan, and (iii) the date of the last revision to the comprehensive plan.*

248 **2. That the State Corporation Commission shall compile and maintain on the Commission's public**
249 **website a searchable database of all solar photovoltaic project special exception decisions and the**
250 **reasons for any adverse decisions made over a period of not less than five years. The Commission shall**
251 **furnish to each locality a standardized form for submitting decision records by July 1, 2026.**

252 **3. That the provisions of this act shall apply to any ground-mounted solar facility with a generating**
253 **capacity of one megawatt or more for which an application for local approval is filed on or after July 1,**
254 **2026, and any such project shall not be governed by any local ordinances inconsistent with this act.**
255 **Any application for a solar energy facility that has been received and accepted by the relevant**
256 **authority prior to July 1, 2026, shall be subject to any applicable local ordinances in place at the time**
257 **the initial application was filed.**