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CHAPTER 789

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INTRODUCED BY Assembly Member Wolk

FEBRUARY 19, 2004

An act to amend Section 714 of the Civil Code, to repeal and add Section 65850.5 of the Government Code, and to repeal and add Section 17959.1 of the Health and Safety Code, relating to **solar** energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2473, Wolk. Energy systems: local regulations.

(1) Existing law provides that any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting property, as specified, that prohibits or restricts the installation or use of a **solar** energy system is void and unenforceable. Existing law permits reasonable restrictions on a **solar** energy system that do not "significantly," as defined, increase the cost of the system or decrease its efficiency or specified performance.

This bill would redefine the term "significantly" with regard to the restrictions imposed on **solar** domestic water heating systems or swimming pool heating systems and photovoltaic systems, as specified.

(2) Existing law prohibits the legislative body of any city or county from enacting an ordinance that prohibits or unreasonably restricts the use of **solar** energy systems other than for the preservation or protection of the public health and safety.

This bill would revise and recast those provisions to require every city, county, or city and county to approve the installation of a **solar** energy system, as defined, through the issuance of specified permits. The bill would declare that the implementation of consistent statewide standards to achieve the timely and cost-effective installation of **solar** energy systems is a matter of statewide concern.

The bill would require **solar** energy systems to meet specified standards. The bill would also require the issuance of a use permit by a city or county to install a **solar** energy system unless it makes specified written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety. The bill would provide for appeal of that decision to the planning commission, as specified. The bill would further make specified findings and declarations in that regard.

Because the bill would impose additional duties on local employees, the bill would create a state-mandated local program.

(3) 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.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) According to the State Energy Resources Conservation and Development Commission, California could face a shortage of reliable electricity and natural gas supplies within the next few years.

(2) The State of California has a longstanding policy of encouraging the construction of clean, renewable, and distributed energy systems, as evidenced by its investment of \$135 million in renewable electrical generation resources through the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code), and enactment into law of Section 25619 of the Public Resources Code, which authorized funds for a **solar** water heating grant program in the 1999-2000 Regular Session. The state has set a statewide goal of increasing renewable generation sources so that 17 percent of total electricity generation originates from renewable energy (Section 383.5 of the Public Utilities Code).

(3) The 2003 Energy Action Plan jointly prepared and adopted by the State Energy Resources Conservation and Development Commission and the California Public Utilities Commission strongly promotes customer owned electricity generation and renewable resources. **Solar** thermal energy technologies that reduce the consumption of natural gas or electricity will play an increasingly prominent role in California's energy portfolio future.

(4) The Legislature, the State Energy Resources Conservation and Development Commission, and the California Public Utilities Commission recognize **solar** energy technologies as abundant, renewable, and nonpolluting energy resources that reduce California's dependence on nonrenewable energy while reducing air and water pollution resulting from fossil fuel-based sources. **Solar** energy systems enhance the reliability and power quality of the electrical grid, reduce peak power demands, increase in-state electricity generation, liberate natural gas supplies for electricity generation purposes, diversify the state's energy supply portfolio, and make the electricity supply market more competitive by promoting consumer choice.

(5) The installation and operation of **solar** energy systems do not create adverse impacts on health, safety, or noise in areas where those systems are installed. In some jurisdictions, however, overly onerous and burdensome rules, regulations, or ordinances make the approval and installation of **solar** energy systems uneconomic because of time-consuming processes that frequently result in the denial of project approval due solely to aesthetic concerns.

(6) In light of existing state policies that promote the utilization of renewable energy resources in order to prevent future electricity and natural gas shortages, which have been enacted in order to protect the environment by encouraging the increased use of nonpolluting energy resources, it is the intent of the Legislature that local agencies do not adopt ordinances that create unreasonable barriers to the installation of **solar** energy systems, including, but not limited to, design review for aesthetic purposes, and do not unreasonably restrict the ability of homeowners, agricultural concerns, and business concerns to install **solar** energy systems. It is the policy of the state to promote and encourage the use of **solar** energy systems and to limit obstacles to their use.

(b) The implementation of consistent statewide standards to achieve the timely and cost effective installation of **solar** energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local governments comply not only with the language of this act, but also the legislative intent to encourage the installation of **solar** energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

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

714. (a) 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 that effectively prohibits or restricts the installation or use of a **solar** energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on **solar** energy systems. However, it is the policy of the state to promote and encourage the use of **solar** energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a **solar** energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) (1) A **solar** energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A **solar** energy system for heating water shall be certified by the **Solar** Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire **solar** energy system and installation.

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

(d) For the purposes of this section:

(1) (A) For **solar** domestic water heating systems or **solar** swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the **solar** energy system by an amount exceeding 20 percent, as originally specified and proposed.

(B) For photovoltaic systems that comply with state and federal law, "significantly" means an amount not to exceed two thousand dollars (\$2,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed.

(2) "**Solar** energy system" has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e) Whenever approval is required for the installation or use of a **solar** energy system, the application for approval shall 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 shall not be willfully avoided or delayed.

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

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

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

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

SEC. 3. Section 65850.5 of the Government Code is repealed.

SEC. 4. Section 65850.5 is added to the Government Code, to read:

65850.5. (a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of **solar** energy systems is not a municipal affair, as that term is used in

Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of **solar** energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install **solar** energy systems. It is the policy of the state to promote and encourage the use of **solar** energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of **solar** energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install **solar** energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a **solar** energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the **solar** energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the **solar** energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

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

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

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

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

(2) A **solar** energy system for heating water shall be certified by the **Solar** Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire **solar** energy system and installation.

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

(g) The following definitions apply to this section:

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

(2) "**Solar** energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

SEC. 5. Section 17959.1 of the Health and Safety Code is repealed.

SEC. 6. Section 17959.1 is added to the Health and Safety Code, to read:

17959.1. (a) A city or county shall administratively approve applications to install **solar** energy systems through the issuance of a building permit or similar nondiscretionary permit. However, if the building official of the city or county has a good faith belief that the **solar** energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

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

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

(d) (1) A **solar** energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A **solar** energy system for heating water shall be certified by the **Solar** Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire **solar** energy system and installation.

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

(e) The following definitions apply to this section:

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

(2) "**Solar** energy system" has the meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.