

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 802

An Act to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 7.3, consisting of sections numbered 15.2-2316.6 through 15.2-2316.9, relating to siting of solar energy facilities.

[H 1675]

Approved April 7, 2020

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article numbered 7.3, consisting of sections numbered 15.2-2316.6 through 15.2-2316.9, as follows:

Article 7.3.

Siting of Solar Energy Facilities.

§ 15.2-2316.6. Siting of solar facilities in economically disadvantaged localities.

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

"Host locality" means any locality within the jurisdictional boundaries of which construction of a commercial solar facility is proposed.

"Opportunity zone" means a census tract in an area of the host locality meeting the eligibility requirements for designation as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

"Solar facility" means a commercial solar photovoltaic (electric energy) generation or storage facility, or any portion thereof. "Solar facility" does not include any project that is (i) described in § 56-594, 56-594.01, or 56-594.2 or Chapters 358 and 382 of the Acts of Assembly of 2013, as amended, or (ii) five megawatts or less.

B. This article applies only to a solar facility located in an opportunity zone.

§ 15.2-2316.7. Negotiations; siting agreement.

A. Any applicant for a solar facility shall give to the host locality written notice of the applicant's intent to locate a solar facility in an opportunity zone in such locality and request a meeting. Such applicant shall meet, discuss, and negotiate a siting agreement with such locality.

B. The siting agreement may include terms and conditions, including (i) mitigation of any impacts of such solar facility; (ii) financial compensation to the host locality to address capital needs set out in the (a) capital improvement plan adopted by the host locality, (b) current fiscal budget of the host locality, or (c) fiscal fund balance policy adopted by the host locality; or (iii) assistance by the applicant in the deployment of broadband, as defined in § 56-585.1:9, in such locality.

§ 15.2-2316.8. Powers of host localities.

A. The governing body of a host locality shall have the power to:

1. Hire and pay consultants and other experts on behalf of the host locality in matters pertaining to the siting of a solar facility;

2. Meet, discuss, and negotiate a siting agreement with an applicant; and

3. Enter into a siting agreement with an applicant that is binding upon the governing body of the host locality and enforceable against it and future governing bodies of the host locality in any court of competent jurisdiction by signing a siting agreement pursuant to this article. Such contract may be assignable at the parties' option.

B. If the parties to the siting agreement agree upon the terms and conditions of a siting agreement, the host locality shall schedule a public hearing, pursuant to subdivision A of § 15.2-2204, for the purpose of consideration of such siting agreement. If a majority of a quorum of the members of the governing body present at such public hearing approve of such siting agreement, the siting agreement shall be executed by the signatures of (i) the chief executive officer of the host locality and (ii) the applicant or the applicant's authorized agent. The siting agreement shall continue in effect until it is amended, revoked, or suspended.

§ 15.2-2316.9. Effect of executed siting agreement; land use approval.

A. Nothing in this article shall be construed to exempt an applicant from any other applicable requirements to obtain approvals and permits under federal, state, or local ordinances and regulations. An applicant may file for appropriate land use approvals for the solar facility under the regulations and ordinances of the host locality at or after the time the applicant submits its notice of intent to site a solar facility as set forth in subdivision A of § 15.2-2316.7.

B. Nothing in this article shall affect the authority of the host locality to enforce its ordinances and regulations to the extent that they are not inconsistent with the terms and conditions of the siting agreement.

C. Approval of a siting agreement by the local governing body in accordance with subdivision B of

§ 15.2-2316.8 shall deem the solar facility to be substantially in accord with the comprehensive plan of the host locality, thereby satisfying the requirements of § 15.2-2232.

D. The failure of an applicant and the governing body to enter into a siting agreement may be a factor in the decision of the governing body in the consideration of any land use approvals for a solar facility, but shall not be the sole reason for a denial of such land use approvals.

2. That the provisions of this act shall not apply to any solar facility that has received zoning and site plan approval, preliminary or otherwise, from the host locality on or before January 1, 2020.